

SESSION OF 2004

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2053

As Amended by Senate Committee on
Federal and State Affairs

Brief*

HB 2053, as amended, creates the Kansas Expanded Gaming Opportunity Act. The Act would authorize up to five state owned and operated destination gaming casinos, and not more than 4,000 video lottery terminals at parimutuel locations, and not more than five video lottery terminals at each club location (fraternal and veterans' organizations, and recreational sports facilities).

Specifically, the bill would include the following provisions:

Destination Casino Commission

The bill creates a seven-member Destination Casino Commission (four appointed by the Legislature and three by the Governor).

The Commission would be authorized to review proposals for destination enterprises and destination casinos and may issue a "certificate of authority" to a destination enterprise manager or a destination casino manager to manage a casino if the Commission decides that the proposal:

- ! includes ancillary destination enterprise operations for dining, lodging, gaming, meetings, and conferences;
- ! would be economically feasible;
- ! be profitable for the state;
- ! would not be economically infeasible to other casinos or tribal gaming facilities; and
- ! would require an investment of at least \$75 million or an investment of \$30 million, plus a demonstration that at least 15 percent of its gaming consumers reside outside Kansas.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The Commission would be authorized to:

- ! require a casino manager to pay an accelerated destination casino net payment of up to \$15,000 for each electronic gaming machine to be operated at a destination casino;
- ! require a schedule repayment of the accelerated destination casino net payment of no shorter than five years with revenues not to exceed 20 percent of the total amount in any one year;
- ! issue five certificates of authority (after the Commission has issued three certificates, it would have to authorize a statewide feasibility study to determine whether additional casinos would be in the best interests of the state and where the additional casinos should be located. The study would have to be completed within 12 months of the issuance of the third certificate of authority);
- ! issue a certificate to a parimutuel licensee who applies to develop and manage a destination casino only if the development maintains live racing facilities and provides for purse supplements to encourage live racing and associated agricultural industry in Kansas (the parimutuel licensee would have to provide the Commission with a contract negotiated with horse and greyhound racing industry. If no such contract is agreed to within 30 days, then the Kansas Racing and Gaming Commission is required to render a final decision within 30 days).

The Commission would not be authorized to:

- ! issue a certificate of authority that would violate market protections for tribal casinos if such violation would cause the state to forfeit its share of revenue from such tribal casino;
- ! issue a certificate of authority for a destination casino within 50 miles of any destination casino who has been issued a certificate within the last two years unless the commission determines that, through market studies, more than one facility, within the same marketplace, is reasonably feasible;

Certificate of Authority

The certificate of authority would include the following:

- ! Include a comprehensive management plan submitted by the destination enterprise or the destination casino manager, but shall place full, complete, and ultimate ownership and control of the gaming operation with the Kansas Lottery.

- ! Provisions for:
 - " regular audits,
 - " accounting procedures and disposition of casino revenues and expenses,
 - " oversight, security, supervision of the operations of the gaming machines,
 - " suspension, revocation, or non-renewal of certificate of authority, and
 - " an accelerated destination casino payment.

- ! Provisions for the disposition of revenue as follows:
 - " If the destination enterprise manager or destination casino manager is a parimutuel licensee, then:
 - not more than 2 percent of the revenue will be credited to the Gaming Act Oversight Fund (expended to pay the expenses for the Kansas Lottery to implement, administer and enforce the provisions of the Act);
 - not less than 2 percent and not more than 4 percent to the county and city where the destination enterprise or casino is located;
 - a maximum percentage specified by the certificate for the expenses of operation of the destination casino shall be credited to the destination casino operating expenses fund (payment for operation of a destination casino with moneys remaining at the end of the year transferred to the State General Fund);
 - not less than 18 percent shall be retained by the state; and

- a percentage of the revenue specified by the certificate of authority shall be paid to the destination casino manager.
- '' If the destination enterprise manager is not a parimutuel licensee, then:
- not more than 2 percent of the revenue will be credited to the Gaming Act Oversight Fund (expended to pay the expenses for the Kansas Lottery to implement, administer and enforce the provisions of the Act);
 - not less than 2 percent and not more than 4 percent where the destination enterprise is located;
 - a maximum percentage specified by the certificate for the expenses of operation of the destination casino shall be credited to the destination casino operating expenses fund;
 - not less than 22 percent shall be retained by the state; and
 - a percentage of the revenue specified by the certificate of authority shall be paid to the destination casino manager.

County Approval

Before a certificate of authority can be issued, or authorization of video lottery terminals to be placed at club locations (fraternal and veterans organizations and recreational and sports facilities), the question of authorization would have to be submitted and approved by the qualified voters of the county where casino and terminals are proposed. A resolution or a petition (10 percent of voters of the county who voted for Secretary of State) for a proposition would be submitted to the voters. A majority of votes from qualified county voters would be required before the Executive Director could enter a contract or approve placement of video lottery terminals. If approved, counties may not be exempt from changes in the Kansas Lottery Act or the Kansas Expanded Gaming Opportunity Act.

Video Lottery Terminals

The Kansas Lottery would be authorized to approve no more than 4,000 video lottery terminals at all parimutuel locations and not more than five terminals at each club location. Payout from the terminal shall not be less than 87 percent on an average annual basis, shall not exceed 95 percent unless written approval from the Executive Director authorizes up to 99 percent. Video lottery terminals operated at club locations only shall be capable of non-cash methods of payment, but shall be payable in cash from the video lottery club sales agent. Video lottery terminals operated at club locations shall play for a minimum of \$.25 per play to a maximum of \$2 per play, and have a maximum prize of \$1000 per game. Video lottery terminals not located at club locations may pay cash if authorized by the Executive Director of the Kansas Lottery.

Net video lottery terminal income shall be distributed as follows:

- ! 21 percent shall be paid to the video lottery parimutuel sales agent or video lottery club sales agent;
- ! 7 percent derived from terminals at parimutuel licensee locations shall be credited to the live horse purse supplement fund and 7 percent to the live greyhound purse supplement fund;
- ! $\frac{1}{2}$ of 1 percent shall be credited to the problem gambling fund grant; and
- ! amounts appropriated for expenses of the Kansas Lottery fund for implementation, administration, and enforcement of the provisions of the expanded gaming opportunity act and the video lottery shall be credited to the gaming act oversight fund.

Disbursement of the 7 percent credited to the Live Horse Purse Supplement Fund would be as follows:

- ! 25 percent would be transferred to the Kansas horse breeding development fund;
- ! 2 percent would be distributed to the official registering agency to be used for horse registration, administration, development, representation and promotion of the Kansas horse racing and breeding industries;

- ! 50 percent would be used as purse supplements for registered Kansas bred foals and 50 percent of such amounts would be used as breed awards for registered Kansas bred broodmares and stallions; and

- ! the remaining balance in the fund would be distributed in accordance to rules and regulations adopted by the Kansas Racing and Gaming Commission with recommendations by the official horse registering agency.

Disbursement of the 7 percent credited to the Live Greyhound Racing Purse Supplement Fund would be as follows:

- ! as purse supplements in accordance with rules and regulations established by the Kansas Racing and Gaming Commission;

- ! 25 percent of the fund would be transferred to the Kansas greyhound breeding development fund.

The Kansas Racing and Gaming Commission would be required to establish a Greyhound Promotion and Development Fund, funded through a voluntary greyhound purse check-off program which would deduct 2 percent from all purses paid to kennels and greyhound owners. Moneys in the fund would be used for development, representation and promotion of the Kansas greyhound industry.

Video lottery terminals would be prohibited from operation at the following parimutuel licensee locations:

- ! Sedgwick County unless the parimutuel licensee conducts at least 8 live greyhound racing programs with at least 13 live races conducted per program;

- ! Wyandotte County unless the parimutuel licensee conducts live horse racing programs for at least 65 days, with at least 10 live races per program, and must offer a minimum of three lives races for quarter horses and 7 live races for thoroughbred races each day and at least 8 live greyhound racing programs;

- ! Crawford County unless the parimutuel licensee conducts at least 8 live greyhound racing programs with at least 13 live races conducted per program;
- ! Greenwood County at Eureka Downs unless the parimutuel licensee conducts at least 40 days of live horse racing;
- ! Anthony Downs unless the parimutuel licensee conducts at least 20 days of live horse racing;

In the case where a parimutuel licensee has not held live races in the preceding 12 months, the Kansas Racing and Gaming Commission shall determine the number of days of live racing for the remaining days of the first calendar year of operation to qualify for the operation of video lottery terminals.

The Commission may provide an exception to the number of days of live racing at the various locations if the parimutuel licensee and the track licensee agree on the number of days and submit it to the Commission for consideration. If no agreement is reached, the Commission would open proceeding and decide, within 30 days, if an exception should be authorized.

Penalties

The bill creates a class A nonperson misdemeanor and severity level 8 and 9 nonperson felonies by persons, managers and Lottery employees who violate the Act.

Gaming Act Revenues Fund

All destination casino revenue and all net video lottery terminal income would be deposited in the Gaming Act Revenues Fund and dispensed as follows:

- ! payment to each destination casino manager amounts specified by the certificate of authority;
- ! payment to video lottery parimutuel sales agent or video lottery club sales agents 21 percent of the net video lottery terminal

income;

! remaining funds in the Fund would be transferred to the SGF and expended as follows;

" State Scholarship program:

- \$3.75 million ending in FY June 30, 2005;
- \$7.5 million ending in FY June 30, 2006;
- \$11.25 million ending in FY June 30, 2007; and
- \$15.0 million ending in FY June 30, 2008 and each fiscal year thereafter.

" Kansas Comprehensive Grant program:

- \$3.75 million ending in FY June 30, 2005;
- \$7.5 million ending in FY June 30, 2006;
- \$11.25 million ending in FY June 30, 2007; and
- \$15.0 million ending in FY June 30, 2008 and each fiscal year thereafter.

" Kansas Public Employees Retirement System

- \$10.0 million ending in FY June 30, 2006;
- \$15.0 million ending in FY June 30, 2007;
- \$11.25 million ending in FY June 30, 2008;
- \$24.4 million ending in FY June 30, 2009; and
- \$37.1 million ending in FY June 30, 2010 and each fiscal year thereafter.

A supplemental state scholarship would be added to the Schools State Scholarship Programs for students at institutions of post secondary education in the amount of \$1,500 commencing after July 1, 2004.

The Kansas Lottery Commission existence would be extended to 2016.

The act would take effect upon its publication in the *Kansas Register*.

Background

In 2003, the Governor appointed a 15-member gaming commission to study the feasibility of introducing gaming at parimutuel tracks, fraternal and veterans locations, and casinos at various locations in Kansas. The Commission held public meetings at various locations in Kansas and submitted its recommendation to the Governor. As a result of this feasibility study, the Governor's Office requested introduction of SB 499 to the Senate Committee on Federal and State Affairs in the 2004 Legislative session.

Proponents testifying before the Senate Committee on Federal and State Affairs included: Chief Counsel to the Governor; representatives of River Falls Entertainment LLC, Butler National Corporation, Benedictine College, Junction City, City of Edwardsville, Unified Government of Wyandotte County, Woodlands Racetrack, Prairie Meadows Race Track (Iowa), Greenwood County (Eureka Downs), Ruffin Companies, Kansas Quarter Horse Racing Association, Kansas Greyhound Association, Kansas Thoroughbred Association, and Kansas Sunflower Club Association (Fraternal Organizations). Written testimony was submitted in favor of the bill by the Kansas Greyhound Kennel Owners, City of Wichita, Sedgwick County, and Kansas AFL-CIO.

Opponents testifying before the Committee included representatives of the Prairie Band Potawatomi Nation, Petroleum Marketers and Convenience Store Association of Kansas, Kansas State Bowling Proprietors Association, Colby Bowl Fun Center, Stand Up for Kansas, Kansas for Addiction Prevention, Kansas Catholic Conference, Kansas Charities Cooperative, the Salvation Army and concerned citizens.

The Executive Director of the Kansas Lottery presented a summary of a study titled, "The Feasibility of Electronic and/or Casino Gaming in Kansas." The Lottery engaged a private group to:

- ! determine whether the expansion of gaming in Kansas is economically feasible;

- ! determine if the expansion of gaming is feasible, determine what type(s) of gaming is (are) preferable;

- ! determine at what venue(s) expanded gaming should be conducted; and
- ! make any other suggestions and provide such market research and feasibility information as may be deemed necessary to the state to adequately evaluate the issue of expanded gaming.

The Senate Committee on Federal and State Affairs amended SB 499 and then deleted the gaming provisions from House Bill 2053 and replaced them with the provisions of SB 499.

The Senate Committee make several amendments to SB 499 which included:

- ! require the county to approve video lottery terminals prior to placement in a county;
- ! prohibit a person under 21 to be employed at a destination casino;
- ! prohibit the destination casino commission from issuing a certificate that would violate market protections for a tribal casino (replaces Section New section 5 (g));
- ! place recreational and sports activities facilities in the definition of "club location";
- ! require feasibility studies to be completed in 12 months of the issuance of the third certificate;
- ! mandate the authorization of an accelerated destination casino payment;
- ! require the Kansas Racing and Gaming Commission to decide within 30 days of an unresolved contract between the parimutuel licensee and representatives of the horse and greyhound industry;
- ! extend the life of the Kansas Lottery Commission to 2016;
- ! authorize the destination casino commission to determine if more than one facility may be placed within 50 miles of another casino prior to the two year waiting period;
- ! increase the number of video lottery terminals at parimutuel tracks from 2,500 to 4,000;
- ! prohibit the operation of video lottery terminals at parimutuel licensee locations in certain counties unless a specific number of live races are conducted (exceptions would be determine by the Kansas Racing and Gaming Commission);
- ! parimutuel licensee locations with authorized video lotteries may

make available in the same facilities simulcast parimutuel races on video terminals and parimutuel windows for wagering on parimutuel races;

- ! distribute percentages of the live horse racing purse supplement fund and live greyhound racing purse supplement fund for specific purposes;
- ! establish a greyhound promotion and development fund to be used for the development, promotion, and representation of the greyhound industry in Kansas; and
- ! include in the school state scholarship program “supplemental state scholarships.”

The fiscal note from the Division of Budget was not available on the amended version of the bill.