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TESTIMONY

TO: The Honorable Ron Ryckman, Jr.

FROM: Whitney Damron
On behalf of Kansas Entertainment, LLC

RE: HB 2537 – An Act concerning gaming.

DATE: March 16, 2016

Good morning Chairman Ryckman and Members of the Committee.

For the record, I am Whitney Damron and I appear before you today on behalf of Kansas Entertainment, LLC in opposition to HB 2537, which create a significant tax break for racetrack owners in this state, including the new owner of The Woodlands located two miles away from Hollywood Casino.

By way of information, Kansas Entertainment, LLC is a joint venture partnership of Penn Hollywood Kansas, Inc. and Kansas Speedway Development Corporation - the development group selected by the State of Kansas in 2009 to develop a destination casino for the Northeast Kansas Gaming Zone.

In 2007, two individuals owned the three pari-mutuel tracks in Kansas and both had significant input into SB 66 (the Kansas Expanded Lottery Act) and strongly supported its passage, so much so that a ceremonial signing ceremony was held at The Woodlands with Governor Kathleen Sebelius and the pari-mutuel industry later that year. Since that time, Mr. Bill Grace, the former owner of The Woodlands has passed away and it is reported that Mr. Phil Ruffin now owns all three of the state's major pari-mutuel tracks in Kansas (The Woodlands, Wichita Greyhound Park and Camptown Greyhound Park).

All of the applicants, including Mr. Ruffin knew what the rules of the game were when SB 66 was under consideration and ultimately passed and signed into law. What is taking place right now is akin to the house changing the rules of the blackjack or poker in the middle of the deck and simply telling their customers to accept such actions. We do not support changing the rules of the game for the pari-mutuel industry who agreed to the rules of the game in 2007 given that we have fulfilled our obligations to the state and our community.

During our discussion of gaming bills with members of the Kansas Legislature, we have often heard the tracks must have the legislation they promote in order to open. To be clear, Mr. Ruffin has the legal authority to apply for a gaming license for two of his properties under current law at tax rates that are on par with those found in other slots-at-track states. Slot machines at Wichita Greyhound Park are prohibited, since the voters rejected slots-at-tracks in Sedgwick County in 2007.

Under SB 66, the track owner receives 25% of the slot revenue and an additional 15% for expenses, for a total of 40% of the slot revenues. There currently are several states with commercial slots-at-track facilities with broad-ranging owner's share of gaming revenues ranging from New York at 35%, 44% in DE, 45% in PA and 47.11% in WV. Mr. Ruffin's proposed revenue split with the State of Kansas would be among the most generous in the country with the owner holding 60-65% of revenues. The additional 25% of revenues going into Mr. Ruffin's account comes primarily out of the State's share, but also takes revenue from the Unified Government and revenue earmarked for the state's Problem Gambling and Addictions Grant Fund.

Given the competitive cost of labor, lower transportation costs and availability of feed stock and veterinary services in our state, the owner's percentage in Kansas is extraordinarily fair and one that was agreed upon by the track owners.

A question often asked is, "Why does the casino have a lower tax rate than the pari-mutuel tracks?" The answer lies in the well-thought logic behind SB 66 and the State's interest in soliciting the best, most competitive proposals for a destination casino in four market areas.

Casino developers engaged in a highly-competitive process with multiple applicants in every gaming zone. Criteria used by the Lottery Gaming Facility Review Board to evaluate proposals included:

- Size of the proposed facility;
- Geographic area in which the facility is to be located;
- Facility's location as a tourist and entertainment destination;
- Estimated number of tourists that would be attracted to the proposed facility;
- Number and type of lottery facility games to be operated at the facility; and,
- Agreements related to ancillary lottery gaming facility operations.

What are the criteria in SB 66 for licensing a slots-at-track proposal? There are none. Track owners were guaranteed their license for a slot parlor merely for owning a pari-mutuel track with no requirements for investment in infrastructure, appeal to tourists or investment in ancillary operations. Giving the pari-mutuel facilities the same tax rate as the destination casinos fails to recognize the cost of the ancillary investments the casino managers were required to make in order to win their respective licenses. In our case, our minimum investment, including a \$25 million application fee, was \$250 million. We exceeded that minimum and have invested over \$300 million in our facility.

In order to insure the State received the best possible proposals from its casino management applicants, SB 66 included language to prohibit a further expansion of gaming in Kansas. The contracts with the three licensed casinos also contain provisions that limit the state's ability to expand gaming further than that allowed under SB 66. Should the state violate this provision, the remedy available to the casino operators is a return of their privilege fee with ten percent interest from the time the fee was paid.

Hollywood Casino's Partnership with Kansas Speedway.

In its application for a casino management license, Kansas Speedway contracted to utilize its best efforts to attract a second NASCAR Cup Race to Kansas Speedway. When Kansas Entertainment, LLC was awarded the gaming license for the Northeast Gaming Zone, NASCAR did approve a second race for Kansas Speedway starting in 2011. Kansas Speedway also constructed a major road course raceway on their property after Kansas Entertainment won the casino license for the Northeast Gaming Zone.

If there is a substantive change in the State's gaming law, it is known that Kansas Speedway very well may reconsider its motorsports strategy in Kansas City, Kansas.

Events at Kansas Speedway generate approximately \$300 million annually in economic development activity for the local and state economies.

Promises Made; Promises Kept.

Kansas Entertainment, LLC made a \$300+ million promise to the State of Kansas and the citizens of Wyandotte County. We have lived up to those commitments by creating a first class, destination casino, the creation of more than 700 jobs and the generation of millions of dollars for the State, Wyandotte County and various charitable organizations in our state.

Kansas Entertainment, LLC continues to be a strong community partner and continues to seek ways to add to its investment in Wyandotte County. When Hollywood Casino was first constructed, our marketing indicated the area would not support a casino hotel without having a significant, detrimental impact on area lodging facilities. Kansas Entertainment, LLC evaluates the market periodically and would move forward on a hotel if feasible. Under our agreement with the Unified Government of Wyandotte County, Kansas Entertainment pays the county 1 percent of its gaming revenues in lieu of constructing a hotel on site. This equates to roughly \$1.4 million a year in additional payments to the Unified Government. Kansas Entertainment is currently working to bring additional features to their property, but these kinds of investments are dependent upon a stable regulatory and taxing framework.

In addition to the risks posed to the state's revenues, locally, Wyandotte County stands to lose between 50 and 70 jobs at Hollywood Casino. This equates to \$1.4 to \$1.6 million in lost payroll wages and taxes. It also means a reduction of \$6.7 to \$7.7 million in annual reductions in direct spending and tax revenue to the Kansas economy and \$4.7 to \$5.4 million in annual reductions in state and local gaming tax revenues. Further, we estimate that we will spend more than \$630,000 less with local vendors.

One other integral party to this discussion who has also lived up to its promises to date is the State of Kansas. Committee members may be aware that KELA and the contracts with the three existing casinos contain language that specifically prohibits the State of Kansas from designating additional areas of the state where gaming facilities are authorized until July 1, 2032.

A number of fiscal notes on gaming bills introduced since 2007, including the fiscal note for HB 2537, contain the following language:

The Kansas Lottery indicates that the state is prohibited from designating additional areas of the state where gaming facilities are authorized until July 1, 2032. Conducting a revote to allow Wichita Greyhound Park to reopen with electronic gaming machines may be viewed as an expansion of gaming that is prohibited under the Kansas Expanded Lottery Act. If it is determined that HB 2537 violates this provision, the state would be required to refund privilege fees from already selected gaming facility managers plus a compounded annual interest rate of 10.0 percent. Currently, the state has received \$61.0 million in privilege fees from four gaming facility managers and it is estimated that interest payments would be at least \$40.8 million presumably to be paid from the State General Fund.

Representative Mark Kahrs has requested an Attorney General Opinion on the further expansion of gaming and whether the enactment of such legislation would violate the contracts the State has entered into with the casino operators. As a part of the Attorney General's research into this question, the casino owners were solicited for their opinions as to whether an expansion of gaming would in fact be a breach of contract. The Polsinelli law firm provided an opinion letter to the Kansas Attorney General on that matter and at this time I would like to conclude my remarks and with the Committee's indulgence, ask Bill Sneed, a partner with the firm to highlight their legal analysis of the consequences of expanding gaming in our state as proposed in HB 2537 and other gaming bills.

Thank you for your time today. I am pleased to stand for questions at the appropriate time.

WBD

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