

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:10 a.m. on February 3, 1998, in Room 254-E of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department
Robin Kempf, Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Midge Donohue, Committee Secretary

Conferees appearing before the committee:
Charles E. Simmons, Secretary of Corrections
Mr. Robert A. Wesley, Kansas Commission on Human Rights
Mr. Paul M. Steele, Kansas Lottery Commission

Others attending: See attached list.

Senator Oleen opened the meeting by requesting staff to brief the committee on **SB 460**, relating to the Department of Corrections placement of offenders. Staff reviewed the provisions of the bill which provide that the secretary of corrections may enter into interagency agreements authorizing the use of its institutions for temporary housing of pretrial detainees, misdemeanor offenders and other persons confined in local detention facilities or jails when the local facility cannot be used to house these persons due to a natural disaster or other emergency. It was pointed out that this provision does not authorize temporary housing of juveniles.

The chair opened the hearing on:

SB 460 An act concerning corrections; relating to the placement of offenders

Charles E. Simmons, Secretary of Corrections, spoke in support of **SB 460 (Attachment #1)**. He told the committee the bill was introduced at the request of the Department of Corrections (DOC) because of restrictions imposed by current law, which limit the use of DOC facilities to persons convicted of felonies who have been sentenced to the custody of the secretary of corrections. Secretary Simmons explained that **SB 460** would allow his department to temporarily house pretrial detainees, misdemeanor offenders and other persons confined in local detention facilities or jails in the event the local facility cannot be used to house persons due to a natural disaster or other emergency. He discussed the agreements his department has entered into with various law enforcement agencies to establish emergency housing options for inmates in the event a DOC facility becomes uninhabitable.

Mr. Simmons stated that the bill would not require the DOC to provide temporary emergency housing and it would always prohibit the Department from housing juvenile offenders. He explained also that any agreement entered into between the DOC and a local detention facility would provide for reimbursement by the local agency of additional operational expenses incurred by the Department due to the emergency housing of persons in custody of the local facility.

Senator Oleen asked if juveniles adjudicated as adults would be included in the group of inmates the authorization for temporary housing covers. Secretary Simmons explained that juveniles who are still in the juvenile process would be excluded from that group. He acknowledged that the chair's point was well taken, and that it might be advantageous to insert language to that effect in the bill.

Senator Gooch inquired if the bill would have the potential of relocating inmates to relieve overcrowding. Secretary Simmons responded this was certainly not the intent when the bill was requested and he did not believe this would occur.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E, Statehouse, at 11:10 a.m. on February 3, 1998.

Senator Oleen advised the committee that Helen Stephens, lobbyist for the Kansas Peace Officers' Association (KPOA), indicated the KPOA will be presenting written testimony on **SB 460**. She said committee action on the bill would be deferred, awaiting that information.

Senator Oleen inquired if anyone else wished to appear in support or opposition to **SB 460**. There being none, the hearing was closed.

Attention was directed to the confirmation process and reappointments under consideration by the committee: Mr. Robert A. Wesley, chair and member of the Kansas Commission on Human Rights, and Mr. Paul M. Steele, member of the Kansas Lottery Commission. Senator Oleen welcomed Mr. Wesley and Mr. Steele and invited them to address the committee.

Mr. Wesley, who was accompanied to the meeting by his wife, told the committee he had been with the Kansas Commission on Human Rights (KCHR) several years and enjoyed the accomplishments and successes of the Commission in the recent past, saying that the backlog of open cases had decreased since 1995, although complaints continued to be filed. He attributed this reduction to changes instigated to address the backlog and a concerted effort toward that end. Mr. Wesley commented on the uniform support received from lawyers representing parties in KCHR complaints for the statutory amendment allowing a party to proceed to court by requesting closure of the complaint if the Commission had not made a finding within 300 days of the complaint being filed. He noted that the average case processing time is reaching consistency with the 300-day option. Mr. Wesley stated that more effective screening procedures had been instigated at the intake level and explained the Kansas Legal Services voluntary third-party mediation program for KCHR complaints, a private-public partnership which has received national recognition.

Mr. Wesley indicated he was very pleased with the accomplishments of the Commission, noting a reduction of four positions required staff to do more with less, and he commended members of the Commission for the work they have done.

Senator Oleen commented that Mr. Wesley had been able to witness the changes, having served a split term on the Commission since 1990.

Senator Jones stated he was extremely pleased with the accomplishments of the Commission in recent years. He commended Mr. Wesley, as chair of the Commission, and assured him of his continued support of their efforts.

Senator Becker moved to favorably recommend to the full Senate the appointment of Mr. Wesley to the Kansas Commission on Human Rights. Senator Jones seconded the motion. The motion carried.

Mr. Wesley expressed his appreciation for the opportunity to appear before the committee and indicated he would focus his remarks on the experience of the Kansas Lottery. He said he was initially appointed to the Commission in 1987 and served as chair the first two years. Mr. Wesley told the committee the Lottery had experimented with ideas not commonly accepted in state government, such as electronic funds transfer which was not a common practice at the time. He explained that the Lottery was and continues to be a laboratory for testing of modern business practices, pointing out that there are things it can do that can be studied and learned from. As examples, he mentioned contracting for services, computer terminals, hardware and software, as well as electronic transfer of funds in the area of taxes.

Senator Vidricksen, noting the potential for sunseting the Lottery in the year 2001, asked Mr. Steele what, if any, contingency plan the Commission had in place to phase out the Lottery. Mr. Steele replied that the Commission carries out the policies established by the legislature and said, should closure become law, there would be some penalties for early termination of vendor contracts. He added that the Commission's major contract is with vendors for computers and on-line computer service. Mr. Wesley stated that the quarterly financial reports of the Commission require accrued liability to be listed for any known or calculated liability, and he acknowledged that it might be well to note on the report the fact that a possible liability does exist.

Senator Oleen noted that all performance compliance audits of the Lottery have been perfect; that the Lottery has operated efficiently on less money than allocated. She pointed out also that there is no lack of confidence in the efficiency of the agency, and complimented the Lottery and its commission on the work it has done.

Senator Jones moved to favorably recommend to the full Senate the reappointment of Mr. Steele to the Kansas Lottery Commission. Senator Harrington seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E, Statehouse, at 11:10 a.m. on February 3, 1998.

Senator Oleen called attention to a memorandum prepared by staff, dated 02/02/98, (Attachment #2), responding to questions raised by the committee during its hearing on **SB 486**, relating to the powers and duties of certain employees of the state gaming agency. Staff reviewed the contents of the memo, pointing out that the KBI does not anticipate any fiscal impact from enactment of **SB 486**; the operations of the Gaming Agency are financed by the Tribal Gaming Fund, and KBI background checks of applicants for tribal gaming licenses are financed by reimbursements from the Indian nations.

The chair reiterated that no taxpayers' money is used to finance the Gaming Agency or casinos, and staff referenced the last page of the handout for a broader picture of expenditures of the agency.

Senator Oleen noted the importance of committee members being knowledgeable on this issue and invited Senator Schraad, who serves as chair of the oversight committee on Indian compacts, to use the Federal and State Affairs Committee as a forum if additional information or study is needed in this regard.

Senator Schraad moved for approval of the minutes of the February 2 meeting. Senator Harrington seconded the motion. The motion carried.

Senator Oleen told the committee that Representative Shari Weber had requested introduction of a bill concerning the sale of intoxicating liquors and beverages during general elections.

Senator Jones moved for introduction of the bill. Senator Vidricksen seconded the motion. The motion carried.

The meeting adjourned at 12:00 noon. The next meeting is scheduled for February 5.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: 2-3-98

NAME	REPRESENTING
ROBERT A. WESLEY	KHRC
Elaine Wesley	
W. Deharts	
Paul M. Steele	Kansas Lottery
Bill Miner	KHRC
Patricia	KHRC
Brandon Myers	"
Robert G. Lay	"
Kathy Mautham	Governor's Office
Judy Truitt	GO
TROY G. SCUDLARK	Citizen KANRA
Acq. General	KA Lottery
Shila F. Adam	Comm. College Assn
Michelle Peterson	Peterson Public Affairs Group



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Topeka, Kansas 66612-1284
(913) 296-3317


Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: February 3, 1998

TO: Senate Federal and State Affairs Committee

FROM: Charles E. Simmons
Secretary of Corrections 

RE: SB 460

SB 460 amends the restrictions imposed by K.S.A. 75-5206 which limit the use of Department facilities to persons convicted of felonies who have been sentenced to the custody of the secretary of corrections. SB 460 would allow the Department to temporarily house pretrial detainees, misdemeanor offenders and other persons confined in local detention facilities or jails in the event the local facility cannot be used to house persons due to a natural disaster or other emergency. SB 460 would prohibit the housing of juvenile offenders in Department facilities.

The Department, in order to implement its emergency response plan, has entered into agreements with various law enforcement agencies to establish emergency housing options for inmates in the custody of the Department in the event one of the Department's facilities became uninhabitable. This process has caused other law enforcement agencies to develop their own emergency plans, thus raising the issue of what services the Department could provide to their agency in the event one of their facilities was rendered unusable due to an emergency. Under current law, the Department is not able to provide temporary emergency housing for persons housed in local detention facilities.

SB 460 would not require the Department to provide temporary emergency housing and would always prohibit the Department's housing of juvenile offenders. Any agreement entered into between the Department and a local detention facility would provide for the reimbursement by the local agency of additional operational expenses incurred by the Department due to the emergency housing of persons in the custody of the local facility.

The Department urges favorable consideration of SB 460

CES/TGM/nd

cc: Legislation file

STATE OF KANSAS



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Bill Graves
Governor

Charles E. Simmon
Secretary

MEMORANDUM

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TO: Senate Federal and State Affairs Committee
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February 2, 1998

To: Senate Committee on Federal and State Affairs

From: Mary Galligan, Principal Analyst
Robin Kempf, Research Analyst

Re: Follow-up on Questions Regarding State Gaming Agency Financing

During the hearing on S.B. 486 Committee members asked several questions about the financing of the State Gaming Agency and the potential impact of the bill on the Kansas Bureau of Investigation (KBI). In order to respond to those questions, we contacted the KBI, the State Gaming Agency, and the Division of the Budget. In addition we reviewed the fiscal note prepared for the bill, the Governor's FY 1998 budget recommendation, and the budget analysis prepared by the Legislative Research Department for the 1998 Legislature.

Summary

1. The KBI does not anticipate any fiscal impact from enactment of S.B. 486, as introduced.
2. The Gaming Agency's operations are financed by the Tribal Gaming Fund, the repository of receipts from the Indian nations. A total of \$120,725 of the loans for fiscal years 1996 and 1997 has not yet been repaid to the State General Fund because the Iowa Nation does not yet have a casino in operation.
3. KBI background checks of applicants for tribal gaming licenses also are financed by reimbursements from the Indian nations.

Financing of the State Gaming Agency

The Gaming Agency was established in 1995 (FY 1996) by Executive Order to implement the state's responsibilities under the four tribal-state gaming compacts that govern tribal casinos in Kansas. Under the Executive Order, the Agency was part of the Department of Commerce and Housing. The 1996 Tribal Gaming Oversight Act made the Gaming Agency a separate entity attached to the Racing Commission for certain administrative purposes. The Racing Commission and the Gaming Agency were collectively renamed the Racing and Gaming Commission in that Act.

Sen. Federal & State Affairs Comm.
Date: 2-3-98
Attachment: #2

Compact Provisions. Financing of the Gaming Agency was expressly provided for in the tribal-state compacts. Each compact requires that the state annually assess the tribe for reimbursement for "reasonable and necessary" costs incurred in relation to the compact. "Necessary regulatory costs of the State Gaming Agency [and] the Kansas Bureau of Investigation" are specifically mentioned as expenses that may be part of the assessment. Under the authority of these compact provisions, the State Gaming Agency has, since its inception, simply divided its annual operating budget by four and assessed each of the tribes an equal portion.

The tribes pay the assessment to support the operation of the Gaming Agency in three installments as provided in the compacts. The first is paid in late September. The other two payments are made on January 1 and April 1 of each year. Payments from the tribes are deposited in the Tribal Gaming Fund in the State Treasury.

General Fund Loan. While the assessment process is straightforward, the timing of the tribes' payments makes financing the Gaming Agency more complex than financing some other agencies supported by special revenue funds. Because the assessments are not paid in full at the beginning of the fiscal year, the Legislature appropriates money from the State General Fund (SGF) as a "loan" to the Gaming Agency so it has operating funds early during the fiscal year. The SGF is repaid for that fiscal year's loan after the tribes pay the assessed amounts

The following table displays the current status of the Gaming Agency's repayments to the SGF. The figures in the "balance owed" line for fiscal years 1996 and 1997 are attributable to the Iowa Nation. The Iowa are not current in paying their assessments because they have not yet opened a casino. The amount owed in FY 1998 is the total unpaid balance for the current year's SGF loan. According to the Gaming Agency, the three tribes other than the Iowa are current with their payments. The tribes' final payment for the fiscal year will be made in April. The agency anticipates paying off the balance of the current loan at the end of the fiscal year if the Iowa pay their assessment.

	<u>Actual</u> <u>FY 1996</u>	<u>Actual</u> <u>FY 1997</u>	<u>Actual to date</u> <u>FY 1998</u>	<u>Gov. Rec.</u> <u>FY 1999</u>
SGF Loans:	\$ 145,976	\$ 381,941	\$ 434,676	\$ 450,000
Repayments	\$ (116,986)	\$ (290,206)	\$ (108,669)	\$ (450,000)
Balance Owed	\$ 28,990	\$ 91,735	\$ 326,007	0

Background Checks. Besides the expense of operating the Gaming Agency, the state incurs the cost of conducting background checks on applicants for tribal gaming licenses. The tribes must deposit with the Gaming Agency \$3,000 for each application for a pre-licensure background check of a key employee, management contractor, primary official of a management contractor, or certain manufacturers/distributors. The compacts contemplate that the cost of some background checks may be more than \$3,000 and permit assessment of the tribes for any amount not covered by the initial deposit.

Currently, either the KBI or the Gaming Agency conducts the background checks, depending on the security level of the employee. The KBI submits bills to the Gaming Agency for those background checks the KBI performs.

The table below displays the receipts to and expenditures from the Tribal Gaming Fund as reported by the Gaming Agency. As the table shows, all Agency expenses have been reimbursed by the tribes, except for amounts owed by the Iowa.

Expenditures. The expenditure figure on this table is the amount spent, approved, or requested for salaries and wages and other operating expenditures, except the cost of background checks conducted by the KBI. The latter expenditures are shown separately on the table. As is the case for any state agency, budgeted salaries and wages for the Gaming Agency include the state's contribution for retirement, health insurance, workers compensation, unemployment, and any sick or annual leave payments due upon retirement.

Tribal Gaming Fund:	Actual FY 1996	Actual FY 1997	FY 1998	FY 1999
Deposits for Background Checks	\$ 234,000	\$ 1,050,321	\$ 497,615 ¹	\$ 715,477
SGF Loan	145,976	381,941	434,676	450,000
Assessments for Gaming Agency Operations:				
Assessment of Iowa	0 ²	0 ²	217,533	341,642
Assessment of Potawatomi	28,990	91,735	217,533	341,642
Assessment of Kickapoo	28,990	91,735	217,533	341,642
Assessment of Sac & Fox	28,990	91,735	217,533	341,642
Total	\$ 466,946	\$ 1,707,467	\$ 1,802,423 ³	\$ 2,532,045 ⁴
Expenditures for Agency Oper.	(119,733)	(366,941)	(872,865) ⁵	(1,366,567) ⁴
Payments to KBI	(111,105)	(235,945)	(360,959) ⁵	0
Transfers to SGF	(116,986)	(290,206)	(445,024) ⁶	(455,174)
Balance	\$ 119,122	\$ 814,375	\$ 123,575	\$ 710,304

- 1) Receipts through January 28, 1998.
- 2) The Iowa Nation was assessed the same amount as the other tribes, but did not make payments during fiscal years 1996 and 1997. Those amounts are to be paid when the tribe realizes casino income.
- 3) Assessment for FY 1998 does not include \$2,733 payment for arbitration.
- 4) The Governor's recommendation adds personnel to the Gaming Agency and anticipates that the Agency will do its own background checks in FY 1999.
- 5) Payments through January 28, 1998.
- 6) Budgeted in the Governor's recommendation.

Attached to this memorandum is a page from the Legislative Research Department's fiscal analysis for the 1998 Legislature. On that page is a table displaying the Agency's request and Governor's recommendation for fiscal years 1998 and 1999.

We hope this information is useful. If you have additional questions, please feel free to call.

Tribal-State Gaming Compact Provisions Regarding State Assessments

Section 25: State Assessment for Costs of Oversight.

(A) **Imposition of Assessment for State Regulatory Expenditures.** The State shall annually make an assessment sufficient to compensate the State for the reasonable and necessary costs of regulating Class III gaming pursuant to this Compact. Reimbursable regulatory expenses under this Section shall include all necessary regulatory costs of the State Gaming Agency, the Kansas Bureau of Investigation, and the cost of tuition, room, board and all necessary instructional supplies and material for any tribal member attending the Law Enforcement Training Center, and the Highway Patrol Training Center as provided by statutes of the State.

(B) **Procedure for Assessments.** On or before August 1st, annually, the State shall render to the Tribe a verified, detailed statement of expenses with supporting documentation of the total cost of regulation for the preceding fiscal year ending June 30, together with proposed assessments for the forthcoming fiscal year based on the preceding fiscal year's cost, except that in the first year of this Compact the assessment shall be prospective and based upon a pro rata allocation of costs if this Compact becomes operative in the course of a fiscal year, and shall be established after consultation with the Tribe. On September 1st annually, the State, after receiving any objections to the proposed assessments and making such changes or adjustments as may be indicated, shall assess the Tribe for the costs of regulation. The Tribe shall thereafter make a payment representing one-third of the assessment within a 20-day period, and shall make payments thereafter on January 1st and April 1st annually.

(C) **Procedure for Appeal of Assessments.** If the State or the Tribe is aggrieved because of any assessment levied pursuant to this Compact, it may, within 31 days from the time provided for the payment of such assessment, elect to resolve the matter pursuant to Section 31.

(D) **Adjustment of Excess Assessments.** In the event the arbitrators find that the total assessment paid by the Tribe during any fiscal year of the State is less than or exceeds the reasonable and necessary costs of regulating gaming operations pursuant to this Compact during such fiscal year, then the State shall adjust the assessment for the succeeding fiscal year in the amount necessary to offset such shortage or excess assessment. If the State or the Tribe are aggrieved because of any failure by the State to make such an adjustment, or the Tribe's failure to pay the adjusted amount any claim for such adjustment shall be presented in the appeal of the assessment as provided in Section 31.

(E) **Adjustment for Termination of Regulatory Oversight.** If the State ends regulatory oversight during the course of a fiscal year in accordance with the terms of this Compact, then there shall be a pro rata adjustment to the assessment made by the State in accordance with Subsections 25(A) and 25(D).

C. State Gaming Agency Operations

Tribal-state gaming compacts have been implemented for four native American tribes, including the Iowa Tribe of Kansas and Nebraska, the Kickapoo Nation of Kansas, the Prairie Band Potawatomi Nation, and the Sac and Fox Nation of Missouri in Kansas and Nebraska. Included in the activities of the State Gaming Agency are the duties and obligations as set forth in the tribal-state gaming compacts. These duties include conducting background investigations of all gaming employees and reporting to the tribal gaming commissions the findings of such checks; monitoring compliance with internal controls and gaming rules; and monitoring compliance with the licensing criteria delineated in the compacts. In addition, the State Gaming Agency exercises the power of law enforcement in the area of detecting criminal gaming violations.

STATE GAMING AGENCY OPERATIONS SUMMARY OF EXPENDITURES FY 1998-FY 1999					
Item	Agency Est./ Gov. Rec. FY 1998	Agency Estimate FY 1999	Change From FY98	Gov. Rec. FY 1999	Change From FY98
By Major Object:					
Salaries and Wages	\$ 589,215	\$ 614,292	\$ 25,077	\$ 880,354	\$ 291,139
Other Operating	606,974	621,015	14,041	486,213	(120,761)
Subtotal—St. Ops.	<u>\$ 1,196,189</u>	<u>\$ 1,235,307</u>	<u>\$ 39,118</u>	<u>\$ 1,366,567</u>	<u>\$ 170,378</u>
Other Assistance	0	0	0	0	0
Total – Gaming Ops.	<u><u>\$ 1,196,189</u></u>	<u><u>\$ 1,235,307</u></u>	<u><u>\$ 39,118</u></u>	<u><u>\$ 1,366,567</u></u>	<u><u>\$ 170,378</u></u>
Financing:					
Special Revenue Funds	\$ 1,196,189	\$ 1,235,307	\$ 39,118	\$ 1,366,567	\$ 170,378
State General Fund	0	0	0	0	0
Total – Gaming Ops.	<u><u>\$ 1,196,189</u></u>	<u><u>\$ 1,235,307</u></u>	<u><u>\$ 39,118</u></u>	<u><u>\$ 1,366,567</u></u>	<u><u>\$ 170,378</u></u>
FTE Positions	13.0	13.0	0.0	20.0	7.0
Unclassified Temp. Positions	3.0	3.0	0.0	3.0	0.0
TOTAL	<u><u>16.0</u></u>	<u><u>16.0</u></u>	<u><u>0.0</u></u>	<u><u>23.0</u></u>	<u><u>7.0</u></u>

Important Issues in This Program

- ◆ An increase of \$25,077 is requested in FY 1999 for salary and benefit adjustments.
- ◆ Other operating expenses are requested to increase by \$14,041 in FY 1999.
- ◆ The Governor recommends additional financing of \$250,000 in FY 1999 for staff salaries of 7.0 new FTE positions dedicated to background checks.
- ◆ The Governor's FY 1999 recommendations for OOE produce a net reduction of \$120,761, including the addition of \$150,000 for expenses related to seven new staff and a reduction of \$270,000 budgeted to pay the KBI for background investigations.