

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Ranking Minority Member Senator Sherman Jones at 11:05 a.m. on March 24, 2000 in Room 245-N of the Capitol.

All members were present except: Senator Lana Oleen, Excused
Senator Nancey Harrington, excused
Senator Laurie Bleeker, excused

Committee staff present: Mary Galligan, Legislative Research Department
Russell Mills, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Judy Glasgow, Committee Secretary

Conferees appearing before the committee: Craig Grant, KNEA
Charles Yunker, American Legion
Glenn Thompson, Stand up for Kansas
Rebecca Rice, Kansas Clubs and Associates
Greg Ziemak, Kansas Lottery

Others attending: See Attached Sheet

Senator Jones announced the committee would continue the hearing on:

SB 667- Act Concerning racing and gaming; concerning electronic gaming machines

Senator Jones recognized Glenn Thompson, representing Stand Up for Kansas, as an opponent to **SB 667**. Mr. Thompson stated that this bill is very similar in all areas to the bill defeated by the Senate last year except for the amount of revenue that the state would receive, which was increased from 15% to 23%. (Attachment 1) He stated that the electronic gaming machines are the most addictive form of gambling and would cost Kansas citizens at least \$81 million annually for theft, fraud, embezzlement, absenteeism and related matters. Mr. Thompson stated that if these are approved there would be no turning back and the potential for millions of dollars in profits would drive investors to push for more and more gambling expansion. He urged the committee to oppose **SB 667**.

Senator Jones recognized Charles Yunker, State Adjutant for The Kansas American Legion, as an opponent to **SB 667**. Mr. Yunker stated that The Kansas American Legion feels that this bill is unfair in that it creates a monopoly for a select few individuals. (Attachment 2). Mr. Yunker requested that **SB 667** be amended to include veterans and fraternal organizations who own or lease their own buildings on a full time basis and have been in existence for a minimum of five years.

Senator Jones recognized Rebecca Rice, Legislative Counsel, Kansas Clubs and Associates, as an opponent to **SB 667**. Ms. Rice stated that The Kansas Clubs and Associates believe that legislation which grants a monopoly license for most of the gambling revenue earned by lottery retail contractors to just three individuals is bad public policy and unnecessarily denies them equal protection. (Attachment 3). Ms. Rice referred to state challenges to state liquor license requirements and stated based upon recent liquor decisions, no rational basis seems to exist for granting racetracks a monopoly other than legislative preference for one business owner over another. Mr. Rice stated that a determination should be made as to whether or not the state actually "owns" the business or is the state being reimbursed for regulatory expense incurred and a minor annual stipend as payment for granting the monopoly. She stated that when a state is involved in a for-profit enterprise, the state does not retain the same protection from challenge as it does when providing essential government services.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 245-N Statehouse, at 11:05 a.m. on March 24, 2000.

Senator Jones announced that the hearing would now turn to proponents of the bill and recognized Craig Grant of the Kansas National Education Association. Mr. Grant stated that the education system in Kansas certainly can utilize and does need additional funding. (Attachment 4). Mr. Grant stated that a key part to section 7, indicates that such funds are not to be used to replace property taxes or general fund support, but are to be for enhancement of educational programs.

Senator Jones noted that written testimony had been distributed to members from the Kansas AFL-CIO as a proponent of **SB 667**. (Attachment 5)

In response to questions from committee members, Mr. Yunker stated the American Legion Posts in Kansas were not unanimous in their desire to have electronic gaming machines, some were in favor while others were against it. Mr. Grant, in response to a question from Senator Biggs, stated that special education could receive money from this fund.

Senator Jones recognized Mr. Ziemak and ask if the his agency could predict the requirement for additional full time employees and the fiscal impact of this bill. Mr. Ziemak stated that his agency was working on this, but he did not have exact figures at this time. He did state that there would be a need for additional personnel. In response to a question from Senator Gooch, he stated that these jobs would be professional in nature and salary, and not minimum wage jobs.

Senator Jones closed the hearing on **SB 667**.

The meeting adjourned at 11:55 a.m. The next meeting will be on March 28, 2000, at 11:00 a.m.

**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST**

DATE: MARCH 28, 2000
24,

NAME	REPRESENTING
Alan Steppat	Harrah's
Bettie Thompson	—
Joe Johnson	KRSC
Myron E. Long	KRCC
Mamie Dymally	Prairie Band Potawatomi
Christina Workin	Prairie Band Potawatomi
DICK CARTER	Ks Thoroughbred Assn
Greg Bueck	K&L College
Cherry Taylor	KQHEA
Ron Herr	Indian Nations in Kansas
Dale McMill	McMill, Davis & Assoc
Bill Denny	Ks Gov. Consulting
Ron Hayes	Wichita Greyhound Park
Chadman	Ks American Legion
Patrick Hurley	GTCAD

STAND UP FOR KANSAS

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**Testimony To Senate Federal and State Affairs Committee
on
Senate Bill 667**

by
Glenn O. Thompson
Executive Director, Stand Up For Kansas
March 23, 2000

Introduction

Good morning Chair Oleen and other members of this committee. Thank you for this opportunity to speak at this public hearing.

As most of you know, Stand Up For Kansas is a state-wide coalition of grassroots citizens who believe expanding legalized gambling in Kansas would have an adverse impact on the quality of life of individuals, families, and communities throughout our state. **We urge you to vote NO on SB 667.**

During the next few minutes, I would like for you to think about the question, **“Are state owned and operated casinos at racetracks for sale?”** Apparently, proponents of racetrack casinos think so, as evidenced by SB 667.

Last year, SB 329 was soundly defeated by the senate by a vote of 13 to 27. SB 667 and SB 329 are similar in all key areas except one – the revenue received by state and local governments. SB 329 would have provided **85%** of net machine income for the tracks and **15%** for the Ks. Lottery, Racing and Gaming Commission, economic development, public education, and local governments. Senate Bill 667 would increase the revenue for these state and local government funds from **15% to 23%**.

Since this is the only significant difference in the two bills, casino proponents must think state owned and operated casinos at racetracks are for sale. And, the only thing we are doing is haggling over the price!

Now, let's compare the key areas of these two bills.

1. Both bills would legalize state owned and operated casinos.

Legalizing state owned and operated casinos is bad government policy! Citizens expect the state to promote the welfare of citizens, not destroy citizens and businesses with casinos.

These bills are a classic slippery slope created by the gambling industry. If approved, there would be no turning back. Once started, where do you stop? Why not assist other industries with state owned and operated casinos? The potential for millions of dollars in profits would drive investors, both in and out of state, to push for more and more gambling expansion. If SB 667 passes, what will be your answer next year to the long line of investors who want to build tracks and casinos in other counties?

As I discussed last year, Kansas citizens did not intentionally authorize the legislature to remove the prohibition on casino machines when they voted for the lottery constitutional amendment. In fact, the first indication that the lottery amendment included casino gambling was in an Attorney General opinion in 1987, three months after the state-wide referendum in 1986.

Senator Dick Bond was correct when he said, in 1992, "I honestly believe that the Kansas voters in 1986 had no idea they were voting some kind of language into the constitution that would permit casino gambling." (*Topeka Capital-Journal*, Jan. 24, 1992)

2. Both bills would permit casinos at parimutuel tracks in Sedgwick, Wyandotte and Crawford counties.

Again, as I discussed last year, a slot machine casino at the Wichita Greyhound Park would destroy thousands of families within surrounding counties. A 1999 study sponsored by the casino industry (not casino opponents), conducted by the Harvard Medical School, determined that 1.6 percent of the people within a 50 mile radius of a casino become pathological gamblers. Since there are over 600,000 people living in 13 counties within a 50 mile radius of the Wichita Greyhound Park, **over 9,000 people in Sedgwick and surrounding counties would become pathological gamblers.**

Further, these 9000 pathological gamblers would cost Kansas citizens **at least \$81 million annually** for theft, fraud, embezzlement, absenteeism, addiction recovery, increased insurance rates, additional law enforcement, judicial and incarceration costs!

And, this cost is for only one racetrack casino! It does not include the social and economic impact racetrack casinos in Wyandotte and Crawford counties would have on Kansas citizens.

3. Both bills would permit "electronic gaming machines," such as poker, blackjack, keno and slot machines.

These "instant gratification" machines are the most addictive form of gambling and are often called the "crack cocaine of gambling." In 1993, Nova Scotia reduced the number of these machines from 2,500 to 1,000 because of the number of persons becoming addicted.

4. Both bills would provide for referendums in the counties where the racetrack casinos would be located.

But a referendum would be of little value. If voters disapprove a proposed racetrack casino, another referendum could be held in two years. Millionaire racetrack owners with deep pockets would continue to initiate referendums every two years until they would finally grind down citizen opponents, as they have done in other states. Grassroots citizens opposing casinos would have little chance of defeating owners, willing to spend millions of dollars on pro-casino advertising.

And, who is watching out for citizens in surrounding counties? They won't have a voice in the referendum, but they will reap the social and economic destruction of casino pathological gamblers.

Conclusion

In conclusion, the only significant difference in SB 329, that was overwhelmingly defeated last year, and SB 667 is the revenue for state and local governments.

Is the state going to become addicted to revenues from racetrack casinos? We hope not!

Are state owned and operated casinos for sale to the racetrack industry? We hope not.

Now in closing, let me share a brief extract from a Chicago Tribune editorial, published less than two weeks ago.

“Riverboat gambling [in Illinois] was sold as a modest and scrupulously regulated attempt to boost tourism while pumping badly needed cash into public schools and fading downstate river towns.... But like a savvy salesman who gets his foot in the door and gradually takes over the parlor, the gambling industry in Illinois has grown into a \$1.3 billion-a-year behemoth that showers politicians with campaign cash and has made a handful of rich and clout-heavy investors even richer....

“No longer required to ply the rivers, boats operate virtually round-the-clock, blurring the distinction between Illinois casinos and their wide-open land-based Nevada counterparts. Automatic teller machines that spit out cash and credit advances, along with booths for quickie loans, are conveniently stationed on-board for bettors who run short—one reason, critics say, the number of Gamblers Anonymous chapters near Chicago jumped from 18 in 1990 to 52 today....

“[T]he promised shot in the arm for schools has never materialized. The state’s share of public school funding is less today than 10 years ago.” (*Chicago Tribune*, 3/12/00)

Again, we urge you to oppose Senate bill 667.

Thank you for your time and consideration.

SENATE STATE AND FEDERAL AFFAIRS
SENATE BILL 667
MARCH 23, 2000

Thank you for permitting me this opportunity to testify on Senate Bill 667. My name is Charles M. Yunker and I am the State Adjutant for The Kansas American Legion.

Overall we feel that SB 667 is unfair because it creates a monopoly for a select few individuals which will further drain dwindling resources from those organizations that conduct Bingo games. With the exception of the past two years, those who wish to promote slot machines and electronic gaming in Kansas have courted The American Legion and other legitimate non profit organizations for support. However with one notable exception, veterans and fraternal organizations have always been excluded from the bills considered by the Legislature.

In other words their past promises to our organizations have been as empty as those presented to the State regarding the number of jobs their gaming will create and the revenue to be realized by the State. Indeed, last year's bill and SB 667 excludes everyone but a few.

Therefore we request that SB 667 be amended to include veterans and fraternal organizations who own or lease their own buildings on a full time basis, and have been in existence for a minimum of five years. We suggest that the number of machines permitted in our private club facilities be limited to a formula based upon each individual location's membership such as five machines per American Legion Post plus one machine per 50 members, and within physical limitations as established by the Kansas Lottery Commission without requirements such as simulcasting horse and dog races.

We believe such limitations will avoid the establishment of "in name only" veterans and fraternal organizations facilities while permitting our organizations the opportunity to increase their charitable fund raising efforts which will benefit far more communities than just those with horse and dog tracks. Simply put if Kansas is to have electronic gaming machines we ask to be given the same opportunity as the select few provided for in Senate Bill 667. If Senate Bill 667 is made law without providing our organizations equal footing the negative impact on us will be far greater than that caused by horse and dog tracks and more recently casinos and river boats.

**TESTIMONY PRESENTED TO THE
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
re: SB 667**

March 23, 2000

**by: Rebecca Rice, Legislative Counsel
Kansas Clubs and Associates**

Madam Chairman and members of the committee, my name is Rebecca Rice and I appear before you today on behalf of the Kansas Clubs and Associates to express opposition to SB 667.

The Kansas Clubs and Associates is an organization of private clubs and associated businesses located primarily in the NE corner of Kansas. The proprietors of these clubs and associated businesses are opposed to SB 667. They believe legislation which grants a monopoly license for most of the gambling revenue earned by lottery retail contractors to just three individuals is **bad** public policy and unnecessarily denies them equal protection.

However, rather than concentrating on the bad public policy, I am taking a different approach than in the past because it appears obvious that neither the Governor nor this legislature are interested in extending this exorbitantly profitable business opportunity to *any of the other, state-contracted lottery retailers*. The interest in unjust enrichment remains reserved for the same three tracks who annually make the same basic argument for the same basic legislation which gives them a huge percentage of the take and reserves little for the state.

Instead, I want to focus on the need to protect against the unintended consequences which usually occur when legislation is introduced and studied at the last moment of a session coupled with an intense lobbying effort to jam any version of it through the legislature. As we are all aware, SB 667 is only being considered because the 1986 legislature didn't remember the importance of definitions. I believe that legislature did not know that it was adopting a constitutional amendment that would open the door to casino gambling in Kansas although it is difficult to comprehend if we consider that Art. 15, §3 was directly referenced in the lottery amendment. If key legislators didn't know, it was because they "assumed" they knew the legal definitions of the terms they were using. Learning from our mistakes, please be certain that essential terms in this or any slot machine legislation are clearly defined, that every duty of the lottery is stipulated and, most importantly, ensure the slot machines are actually "state owned and operated" with a rational basis for determining state contractors.

This issue of unintended consequences for the expansion of gambling has been highlighted because of a remarkable legal development involving the liquor industry. It has been assumed the 21st Amendment gave the states absolute authority to regulate liquor in any manner, whether or not discriminatory (except for race, gender, etc.). However, state liquor regulations have recently been challenged in federal district court

as violating the federal constitution. Initial challenges were primarily, but not entirely, limited to state liquor license residency requirements. In fact, Kansas is currently defending a challenge to our 10 year residency requirement for liquor distributors.

More recently, state laws prohibiting the direct shipment of liquor from out of state suppliers to consumers are being successfully challenged. The most recent decision was a Texas federal court ruling whose dicta went far beyond a determination that direct shipping of alcohol was a violation of the commerce clause. The court explained its extraordinary extension of previous, more limited decisions by explaining that the 21st amendment doesn't really give states complete authority to regulate liquor but instead only authorizes regulation pertaining to the "core" issue of temperance. Therefore, the court reasoned that regulations not addressing the issue of temperance were assumed protectionist and, subject to successful commerce clause challenge.

I have attached a copy of the latest list I received of the current federal court challenges. Most of these are challenges to states' laws banning interstate shipping of liquor to consumers. However, the challenges are already expanding to other regulations. New York has recently been sued in an effort to invalidate the New York shipping ban and advertising limitations. Illinois' liquor franchise law has also been challenged in federal district court. A preliminary order has found the law to violate the commerce clause.

The Indiana case and the Texas case have been appealed. The industry assumes the issue of 21st Amendment status in reference to the Commerce Clause will ultimately be decided by the U. S. Supreme Court and most industry members are optimistic it will be found not subordinated to the commerce clause. However, the organizations and businesses orchestrating these challenges have spent a lot of money to systematically and strategically file these lawsuits. It must be assumed they also are confident of their position.

I am addressing this issue only to illuminate the possible ramifications of "assuming" Kansas will always have complete authority to regulate gambling in any manner regardless of the arbitrary and capricious manner in which it has chosen its slot machine licensees. A state's authority to create gambling monopolies without a rational basis may always be upheld. However, the states do not have a 21st Amendment granting them full authority. The courts have implied the authority from the 10th Amendment. However, gambling is not specifically articulated. And, depending upon the Supreme Court's decision in these liquor cases, a constitutional amendment may have been immaterial to protect against commerce clause challenges especially because the states continue to encourage the growth and activity of gambling granting it entertainment status.

However, the state can take steps to protect itself against the possibility of a successful challenge which might result in unintended and undesirable consequences. The best place to start is to be certain any slot machine legislation passes the constitutional test of "state owned and operated". I don't think this legislation meets that test.

Obviously, any slot machine legislation can be challenged in state court as violating the constitutional mandate. However, a state challenge will simply invalidate the law and give the legislature an opportunity to fix the legislation or the constitution, as they did in Missouri. But, a federal constitutional action will not be an action to void the state law. It will be an action to require the state to give slot machine licenses to other businesses who meet all licensing criteria except the arbitrary limitation that they must own, at the time this legislation was written, one of three tracks--one track which is not yet licensed while excluding a track that is operating and licensed. Based upon these recent liquor decisions, no rational basis seems to exist for granting racetracks this monopoly other than legislative preference for one business owner over another.

Apparently, past court decisions have determined gambling to be such a dangerous activity that great latitude has been accorded the state to discriminate at will. However, just as the states were once allowed to discriminate for *voting privileges, *business opportunities, *educational opportunity, *services, and *state employment--clearly "state owned and operated"--the courts have used the commerce clause, the equal protection clause and, when necessary, the privileges and immunities clause to eliminate the discrimination. The discrimination is disallowed whether it is discrimination of race, gender (although age discrimination is now allowed) or economic opportunity, especially when the economic opportunity appears to have as its purpose protecting state-based businesses from competition.

Remember, when a state is involved in a for-profit enterprise, the state does not retain the same protection from challenge as it does when providing essential government services.

The unintended consequence may not come from a commerce clause challenge which isn't the issue. The important question is: have the possibly extreme unintended consequences been considered and efforts made to eliminate the possibility?

This legislation should be carefully examined to ensure that it actually creates a "state owned and operated" slot machine business. If there is any doubt, the bill should be rejected until you are certain it can pass such test. The logical place to begin an examination is the percentage the "owner" (the state) is retaining in profits. On its face, that provision justifies a court challenge: does the state actually "own" the business or is the state being reimbursed for regulatory expense incurred and a minor annual stipend as payment for granting the monopoly.

A court might actually rule that this legislation created a "state owned and operated" slot machine business, ruling that the state is simply a terrible business owner. If ineptitude will be our best defense to a constitutional challenge of this legislation, perhaps the state should make the business decision to stay out of the entertainment business and return to simply taxing people to provide essential government services.

Thank you, madam chairman and members of the committee for allowing me to present this testimony.

PENDING DIRECT SHIPPING LITIGATION

Florida

Bainbridge v. Bush
USDC, Middle District

Case No. 99-2681CIV-T25E

Plaintiff attorney:

Robert T. Epstein
Epstein & French
Indianapolis, IN
317-639-1326
FAX 317-638-9891

Defendant attorney:

Eric J. Taylor, Assistant AG
850-414-3798
FAX 850-488-5865

Status:

The Florida case is still in its infancy. It is anticipated that the Wine & Spirits Distributors of Florida will be seeking to intervene in the case in the future.

Indiana

Bridenbaugh v. Modisett
USDC, Northern District
Judge Allen Sharp

Case No. 3:98CVO464AS

Plaintiff attorney:

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Indianapolis, IN
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FAX 317-638-9891

Defendant attorney:

David Arthur, Assistant AG
317-232-6201
FAX 317-232-7979

Invervenor-Defendant (Wine & Spirits Wholesalers of Indiana) attorney:

William C. Barnard
Sommer & Barnard, P.C.
Indianapolis, IN
317-630-4000
FAX 317-236-9802

Status:

On February 23, WSWA filed an Amicus brief with the 7th Circuit Court of Appeals seeking to overturn the lower court's ruling striking down Indiana's laws against direct shipping. The brief is a powerful piece of legal advocacy defending the 21st Amendment and was co-signed by 17 other industry, public policy and family organizations. Notably, Gallo Winery filed a separate Amicus brief defending state rights under the 21st Amendment as did the National Alcohol Beverage Control Association (NABCA) and the National Conference of State Liquor Administrators (NCSLA).

Texas

Dickerson v. Bailey
USDC, Southern District
Judge Melinda Harmon

Case No. H-99-1247

Plaintiff attorney:

Mark C. Harwell
Cotham, Harwell & Evans
Houston, TX
713-647-7511
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Defendant attorney:

W. Reed Lockhoof, Assistant AG
512-463-2080
FAX 512-495-9139

Status:

The Texas ABC voted 2-0 to appeal the district court's ruling in the Dickerson case which struck down Texas laws prohibiting direct shipping. However, Texas will try to avoid the need to appeal by filing several motions in an attempt to get the district court judge to reconsider its earlier opinion.

(included a civil rights claim)

Virginia

Bolick v. Roberts
USDC, Eastern District
Senior Judge Richard L. Williams

Case No. 3:99CV755

Plaintiff attorney:

Matthew S. Hale
Hale & Hall, P.L.L.C.
Williamsburg, VA
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Defendant attorney:

Louis Matthews, Assistant AG
804-786-6547
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Status:

On February 4, the judge in the case denied a motion filed by the Virginia ABC to dismiss the action on procedural grounds. The case is now moving forward and motions for summary judgment are being prepared by both sides in that case.

(Civil rights violation claimed)

New York

Status:

It is anticipated that at least two New York wholesalers will file motions to intervene in the New York litigation filed by the Insitute for Justice. The state's response to the lawsuit is due on March 23, and it is anticipated that the motions to intervene will be filed on or before that date.



Craig Grant Testimony
Senate Federal and State Affairs Committee
March 24, 2000

Thank you Madame Chair. I am Craig Grant and I represent Kansas NEA. Thank you for the opportunity to visit about one aspect of SB 667.

I am not here to talk about the technical aspects of the bill. I am also not going to bicker about the percentages contained in the bill. I do want to take this opportunity to indicate to you that the education system in this state certainly can utilize and does need additional funding. As you all know, we have had a difficult time funding the base budget and the special education funding in our budget. Additionally, the Governor has not been able to adequately fund in-service education, the structured mentoring program, the communities in schools program, the innovative grant program, and other programs that can improve the education for our children. Community colleges, vocational-technical schools, and regents' universities are concerned about future funding for post-secondary education. If SB 667 can help us increase funding for these important programs, we believe we should take a good look at the measure.

The key part to new section 7, starting on page 8 of the bill, is on page 9, lines 10-13 that indicate that such funds are not to be used to replace property taxes or general fund support for our programs. The funds are to be for enhancement of our programs. We believe that this section should definitely stay in the bill as you work the legislation.

We are in a situation that we must start looking for enhancements of our programs in order to keep improving our education system. Thank you for listening to our concerns.

Kansas AFL-CIO

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Lloyd Lavin
Wil Leiker
Adrain Loomis
Pam Pearson
Emil Ramirez
Craig Rider
Debbie Snow
Betty Vines*

March 24, 2000

Senate Federal and State Affairs Committee
% The Honorable Lana Oleen
Chair, Senate Federal and State Affairs Committee
Capitol, Room 136 N
Topeka, Kansas 66612

Dear Senator Oleen and Members of the Committee,

On behalf of the AFL CIO we urge your support of 2000 SB 667 enacting the Kansas Gaming Recovery Act. The addition of electronic gaming devices at the three existing parimutuel race tracks will be a substantial benefit to all of Kansas and particularly those counties (Wyandotte, Sedgwick and Crawford) where new construction and additional jobs will occur.


We understand the owners of these race tracks plan to invest \$140 million in construction and improvement for the existing facilities. Such capital investment will generate construction and transportation jobs.


In addition, the slot operations planned at the tracks are estimated to generate an additional 2,300 long-term jobs at the gaming facilities, not to mention additional service jobs necessary to support these successful operations.

This type of dynamic economic activity can be beneficial to the working men and women of this state and on their behalf we urge the committee's endorsement of SB 667.

If you have any questions or concerns, please feel free to contact us.

Sincerely,


Jim DeHoff
Executive Secretary Treasurer


Wayne Maichel
Executive Vice President

