

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Vice-Chairman Arlen Siegfried at 1:30 P.M. on March 7, 2005 in Room 313-S of the Capitol.

All members were present except:

Representative John Edmonds- excused
Representative Candy Ruff- excused
Representative Kenny Wilk- excused

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Carol Doel, Committee Secretary

Conferees:

Glenn Thompson, Stand Up for Kansas
Mary Torrence, Office of the Revisor

Others attending:

See attached list

Vice-Chairman Arlen Siegfried called the meeting to order and opened the floor for bill introductions.

There were no bill introductions and the Vice-Chair opened public hearing on **HB 2479**.

Glenn Thompson, Executive Director, Stand Up For Kansas was recognized as a proponent of **HB 2479**. In his testimony, Mr. Thompson related that the purpose of this bill is to establish a process for the legislature, rather than the LCC, to consider proposed Indian gaming compacts when the legislature is not in session. He summarized the background that led to enactment of the statute. In the conclusion of his testimony, Mr. Thompson stated that current statutes provide for the LCC to ratify a compact when the legislature is not in session. This provision is no longer needed and may even be unconstitutional. Furthermore, the impact of a casino on local communities and the state is so great that only the legislature should have the authority to ratify a compact, as specified in **HB 2479**.

Mr. Thompson also addressed **SB 153**, which was also being heard, relating that this bill has the same objective as **HB 2479** except the provision in **SB 153** providing the governor the authority to call a special session is not required. Mr. Thompson states that it is the suggestion of his organization that the language in **SB 153** be replaced with the language in **HB 2479**. (Attachment 1)

With no other proponents and no opponents, the Vice-Chair closed the public hearing on **HB 2479** and opened the hearing on **SB 153** and asked Mary Torrence of the Revisor's Office to give a briefing on the difference between the two bills.

Mrs. Torrence stated that the difference between the two bills is fairly minuscule. She related that **HB 2479**, would require that if a compact were to be approved between two legislative sessions, it would require the Governor to call a special session or for a special session to be called. Under **SB 153**, there is a provision for a special session to be called by the Governor in between two regular sessions and it refers to the same constitutional provision as far as calling a special session. In either case, if a compact were to be ratified between sessions, it would require calling a special session of the legislature.

There were no proponents and no opponents to **SB 153**.

Vice-Chair Siegfried asked for a motion to approve the minutes of February 9, 16, 17, 21, and 22.

Representative Dillmore made a motion to adopt the minutes as read. Representative Merrick seconded the motion. Vote was taken. Minutes were adopted.

With no further business before the committee, Vice-Chair Siegfried adjourned the meeting.



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**Testimony To House Federal and State Affairs Committee
on
House Bill 2479**

Glenn O. Thompson
Executive Director, Stand Up For Kansas

March 7, 2005

Introduction

Good afternoon Chairman Edmonds and members of the committee. Thank you for this opportunity to speak at this public hearing. I am speaking on behalf of **Stand Up For Kansas**, a state-wide coalition of grassroots citizens who oppose the expansion of gambling in Kansas. **We urge you to support House Bill 2479.**

KSA 46-2302 provides the Legislative Coordinating Committee the authority to ratify an Indian gaming compact when the legislature is not in session.

Nevertheless, when the Joint Committee on State-Tribal Relations forwarded a proposed compact to the LCC for consideration last year, many legislators were surprised that the LCC had this authority and questioned the prudence of assigning this authority to the LCC. In fact, the Speaker of the House, who was chairman of the LCC at that time, chose to not place the compact on the LCC agenda, stating, "the full legislature should decide gambling issues."¹

The purpose of this bill is to establish a process for the legislature, rather than the LCC, to consider proposed Indian gaming compacts when the legislature is not in session.

Now, before discussing the bill, I would like to briefly summarize the background that led to enactment of the statute, since this background is significant in understanding the bill.

Background

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| October 1988 | Congress enacted the Indian Gaming Regulatory Act (IGRA). If Class III gaming is conducted in a state and if an Indian tribe desires to operate a Class III casino on Indian land acquired prior to the enactment of IGRA in the state, the act requires the tribe negotiate a compact with the state for operation of the casino. The act states that if the state fails to conduct such negotiations within 180 days, the tribe may initiate a cause of action against the state. |
| 1991-1992 | Gov. Finney negotiated compacts with the four Indian tribes in Kansas. |

FEDERAL AND STATE AFFAIRS

Date 3-7-05

Attachment 1

July 1992	In a lawsuit initiated by the Ks. legislature, the Ks. Supreme Court ruled that the governor does not have the authority to approve an Indian gaming compact without ratification by the legislature.
March 1993:	Legislature passed and governor signed bill (H 2023) containing procedures for negotiating and entering into a gaming compact with an Indian tribe (KSA 46-2302)
April 1995:	Legislature ratified gaming compacts for two of the four Kansas tribes: Iowa (HR 6013 & SR 1864) and Prairie Band Potawatomie (HR 6014 & SR 1865)
After 1995 session	LCC ratified gaming compacts for the remaining two Kansas tribes: Kickapoo and Sac & Fox.
March 27, 1996	In Seminole Tribe of Florida v. Florida, the U.S. Supreme Court ruled that a tribe cannot sue a state for cause of action under IGRA without the state's consent. ²

Need for bill

- 1. Approval of an Indian gaming compact is a major policy decision, affecting citizens and businesses throughout the state.** For example, the compact negotiated with the Kickapoo and Sac & Fox tribes was 82 pages in length, containing numerous policy issues such as location of the casino, revenue sharing with state and local governments, constraints on other types of gaming, which if exceeded, would terminate revenue sharing, market protection, employee benefits, time limit on existing compacts and contributions to problem gambling fund.
- 2. The need no longer exists for the LCC to serve as a backup ratification body for compacts with the four Kansas tribes.**

The legislature assigned the LCC the authority to ratify Indian gaming compacts when the legislature was not in session in order to comply with the 180-day time constraint imposed by IGRA. Since compacts with the four Kansas tribes were ratified in 1995, **this requirement is no longer applicable to these tribes.**

Furthermore, as discussed previously, the U. S. Supreme Court ruled in 1996 that a tribe cannot sue a state for cause of action under IGRA without the state's consent. Therefore, the section in IGRA specifying the 180-day time constraint is not legally binding.

- 3. Assigning the LCC authority to ratify Indian gaming compacts may not be constitutional**

Finally, our attorney, Robert Frey³, a former state legislator and chairman of the House and Senate Judicial committees, doubts that an Indian gaming compact ratified by the LCC could withstand a court challenge.

The following is Mr. Frey's opinion, for the record.

"While reading statutes in Chapter 46, Article 12, I noted that all of the authority that is given to the LCC is administrative in nature. There is no language that specifically speaks of authority to actually enact legislation creating public policy. For instance, I do not believe that the LCC could ever call a meeting during the interim and enact legislation to repeal the death penalty. I believe

they could only take action to administer the legislative branch of government but they have no specific authority to do anything else.

HOWEVER, KSA 46-1202 does say, 'The legislative coordinating council shall represent the legislature when the legislature is not in session.' I frankly do not know what that means for sure. I believe it means that the LCC can intervene in any litigation on behalf of the legislature but nothing more. If it is interpreted to mean that the LCC can introduce and pass legislation that changes established public policy or creates new public policy I would be surprised. If the legislature chooses to pass legislation that gives the LCC authority to ratify a compact but does not specify the criteria required to do so I would think that a court could rule that such legislation is an unconstitutional delegation of legislative authority. The authority for the legislature is located in the Kansas Constitutions in Article 2, Section 1. It simply states 'The legislative power of this state shall be vested in a house of representatives and senate..'

I do not believe that ratification of a compact can be delegated since it would require a majority vote of both the House and the Senate if it were done during a regular legislative session. It simply is not the same as giving the LCC authority to hire and fire legislative staff or appointing a new Revisor of Statutes. That is classic administrative authority, not legislative authority.

In summary, the adoption or rejection of an Indian gaming compact is a policy decision rather than an administrative act in my opinion. That being the premise, the delegation of confirmation authority by the legislature to the LCC is an unconstitutional delegation of legislative authority."

Conclusion

Current statutes provide for the LCC to ratify a compact when the legislature is not in session. This provision is no longer needed and may even be unconstitutional. Furthermore, the impact of a casino on local communities and the state is so great that only the legislature should have the authority to ratify a compact, as specified in HB 2479.

Now, before closing let me say that SB 153 has the same objective as HB 2479. However, the provision in SB 153 providing the governor the authority to call a special session is not required. In fact, Sen. Vratil remarked during Senate Federal and State Affairs Committee debate on SB 153 that this provision may not be constitutional. Furthermore, the language in HB 2479 is clearer than the language in SB 153. Therefore, we would suggest you replace the language in SB 153 with the language in HB 2479 and pass SB 153 as amended.

Thank you.

Endnotes

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- 1 Steve Painter, "Legislative leader stalls KCK casino proposal," Wichita Eagle, Nov. 18, 2004
 - 2 Seminole Tribe of Florida v. Florida, U. S. Supreme Court decision, March 27, 1996
 - 3 Robert Frey served in the Kansas House of Representatives for ten years, from 1975 through 1984. During that time he served in various leadership positions, including House Majority leader, member of the LCC, chairman of the House Judiciary committee and member of the Judicial Council. Mr. Frey served in the Senate for four years, from 1985 through 1988. During that time he served as Chairman of the Senate Judiciary committee and a member of the Judicial Council.