

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS

The meeting was called to order by Chairman Pete Brungardt at 10:40 a.m. on Wednesday, January 12, 2005, in Room 231-N of the Capitol.

All Committee members were present

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Dee Woodson, Committee Secretary

Others attending: See attached list.

Conferees appearing before the committee: Ed Van Petten, Executive Director, Kansas Lottery

Chairman Brungardt reviewed the responsibilities of the Senate Federal and State Affairs Committee (SF&SA). He said that this was a standing committee having direct oversight during the Session for the Department of Corrections, the Division of Alcoholic Beverage Control of the Department of Revenue, the Kansas Lottery Commission, Kansas Racing Commission and the National Guard. The committee considers legislative areas involving alcoholic beverage control, parimutuel wagering, operation of state lottery, corrections issues, and matters specifically concerning federal-state relations.

He announced the schedule for next week's meetings which included hearings on three bills set for Thursday, January 20. He asked Mary Torrence, Revisor's Office, to give a review of SB 499 gaming bill from the 2004 Legislative Session. She said that SB 499 was proposed by Governor Sebelius, and would have enacted the Kansas Expanded Gaming Opportunity Act. This would have authorized the operation of state owned and operated destination casinos and video lottery terminals in counties where the voters had voted to allow the casinos and/or video lottery terminals in the county. The SF&SA Committee struck the provisions of HB 2053 and amended it into a revised version of SB 499, but was not passed by the Senate Committee of the Whole. (Attachment 1)

Ms. Torrence gave the history of SB 499 and HB 2053. SB 499 was amended into HB 2053, and which both bills provided for the establishment of a destination casino commission. Under both bills, a portion of the revenues from destination casinos would be designated for use by cities and counties where the casinos are located and, if the casino is operated by a parimutuel licensee, for use to support horse and/or greyhound racing. She said that in addition to receiving revenues for gaming oversight, the state would receive revenues to be used for educational scholarships and grants and for retirement of bonds issued to support KPERS.

The Revisor further explained that both SB 499 and HB 2053, as amended, would authorize the Kansas Lottery to operate video lottery terminals at parimutuel racetracks and specified veterans and fraternal clubs which have been in operation for five years. She also talked about amendments added to HB 2053 which authorized video lottery terminals at recreational sports facilities. Ms. Torrence spoke about the different limitations placed on the number of terminals at parimutuel racetracks under both bills.

Chairman Brungardt called upon Dennis Hodgins, Legislative Research Department, to review for the committee the 2004 Interim Indian Gaming Compact, and give an overview of gaming in Kansas. (Attachment 2)

Mr. Hodgins stated that on October 18, 2004, the Governor entered a compact with the Sac and Fox Nation and the Kickapoo Tribes in the State of Kansas to form a gaming compact. He explained the provisions of the compact which are contained in the Governor's Executive Summary distributed to committee members. (Attachment 3) As information, copies of the Joint Committee on State-Tribal Relations 2004 Report were disseminated to committee members. Mr. Hodgins pointed out that the Joint Committee on State-Tribal Relations reported the proposed tribal gaming compact without recommendation to the Legislative Coordinating Council (LCC). (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs at 10:40 a.m. on Wednesday, January 12, 2005, in Room 231-N of the Capitol.

Mr. Hodgins reviewed the Gaming History in Kansas Brief that was created by the Legislative Research Department. (Attachment 5)

Discussion and questions followed regarding possible projection of revenue from the Governor's Office and how long it would take to build the new casino. Senator Vratil inquired as to what were the revenue projections on SB 499. The Revisor responded that she would look those up, and get back with the projected figures. Brief discussion followed regarding projections of revenue.

Committee questions and discussion continued regarding: limitation on number of slot machines within a certain number of miles from the compact; Indian Gaming Revenue Act (IGRA); and whether revenue would be considered a proceeds tax and be prohibited by the federal government. Mr. Hodgins stated that IGRA would not allow a state to tax; however, revenue sharing may not be a tax by the federal government. The Revisor clarified the interpretation of the tax issue.

Inquiry was made as to what has happened in other states in regard to revenue sharing. The Chairman asked Mr. Hodgins to check into that issue and furnish summary sheets for the committee members.

Chairman Brungardt called upon Ed Van Petten to give an overview of the Kansas 2004 Lottery Budget and new developments in the Kansas Lottery 2004-2005. Mr. Van Petten furnished members with a packet of various publications of the Kansas Lottery which are distributed to players and retailers, as well as historical and current information on sales, prizes, commissions and transfers. He talked about lottery sales which have shown an increase the last three fiscal years, after decreases in FY00 and FY01. Sales figures along with Retailer Commissions and Bonuses were detailed in his written testimony.

(Attachment 6)

Mr. Van Petten explained the various lottery games and sales totals between the different games. He said that the Casey's stores are again participating in the sale of lottery tickets at the start of this fiscal year. He outlined the change in monthly transfers through the Omnibus bill which allowed for minimum monthly transfers of \$4.5 million and a minimum annual total of \$59 million. There had been a statutory provision of transferring 30% of gross sales each month. He added that last year the Lottery transferred \$70.2 million.

Mr. Van Petten talked briefly on lottery operations and partnerships with Kansas businesses and industries. He concluded his presentation by explaining the Veterans Benefit Games, and that the projected total transfer for this fiscal year would be approximately \$785,000. These dollars fund the National Guard scholarships and assistance to the Veterans' Cemetery System in the State of Kansas.

A committee member asked what effect the Oklahoma Lottery would have on Kansas' sales. Mr. Van Petten said Kansas could decrease sales in Oklahoma residents from \$12 -\$15M per year.

Chairman Brungardt expressed the committee's appreciation for his presentation.

The meeting was adjourned at 11:40 a.m. The next meeting is scheduled for January 18, 2005, at 10:30 a.m.

Office of Revisor of Statutes

Statehouse, Suite 322-S
300 S.W. 10th Avenue
Topeka, Kansas 66612-1592
Telephone: 785-296-2321 FAX: 785-296-6668
email: maryt@rs.state.ks.us

MEMORANDUM

To: Senate Committee on Federal and State Affairs
From: Mary Torrence, Senior Assistant Revisor of Statutes
Date: January 12, 2005
Subject: 2004 Senate Bill No. 499 and 2004 House Bill No. 2053, as Amended

During the 2004 legislative session, the Senate Committee on Federal and State Affairs introduced Senate Bill No. 499, which was proposed by Governor Sebelius. The bill would have enacted the Kansas Expanded Gaming Opportunity Act and would have authorized the operation of destination casinos and video lottery terminals in counties where the voters had voted to allow the casinos and/or video lottery terminals in the county. After hearings on the bill, the Committee struck the provisions of House Bill No. 2053 and amended into it a revised version of Senate Bill No. 499. The bill was amended but not passed by the Senate Committee of the Whole.

Destination Casinos

The provisions of both Senate Bill No. 499 and House Bill No. 2053, as amended, provided for the establishment of a destination casino commission. The commission would take proposals and contract for the operation of not more than five destination casinos and enterprises. A parimutuel licensee could be awarded a contract only if the licensee would operate live racing and provide purse supplements adequate to encourage live racing and associated industries. To win a contract, a destination casino and enterprise would be required to either (1) invest at least \$75,000,000 in infrastructure or (2) invest at least \$30,000,000 in infrastructure and demonstrate ability to attract at least 15% of its gaming consumers from outside Kansas. The bills provide a number of other criteria upon which the commission would be required to base its decision to award a contract,

Senate Federal & State Affairs
Committee

1-12-05
Attachment 1

including limitations on locating a casino within certain distances of other casinos.

Under both bills, a portion of the revenues from destination casinos would be designated for use by cities and counties where the casinos are located and, if the casino is operated by a parimutuel licensee, for use to support horse and/or greyhound racing. In addition to receiving revenues for gaming oversight, the state would receive revenues to be used for educational scholarships and grants and for retirement of bonds issued to support KPERS.

Video Lottery Terminals

Both Senate bill No. 499 and House Bill No. 2053, as amended, would authorize the Kansas lottery to operate video lottery terminals at parimutuel racetracks and specified veterans and fraternal clubs which have been in operation for five years. In the amendments to House Bill No. 2053, the Committee added a provision authorizing video lottery terminals at recreational sports facilities (such as bowling alleys) which have been in operation for five years and are keno licensees of the Lottery. Under Senate Bill No. 499 the number of terminals at parimutuel racetracks could not exceed 2,500 and under House Bill No. 2053 the number could not exceed 4,000. The number of terminals at other locations could not exceed five under both bills.

A portion of the revenues generated by video lottery terminals under both bills would be used by the state for expenses of administration and oversight, problem gambling, educational scholarships and grants and retirement of KPERS bonds. A portion of revenues from video terminals located at parimutuel racetracks would also be used to support horse and/or greyhound racing.

Report of the
Joint Committee on State-Tribal Relations
to the
2004 Kansas Legislature

CHAIRPERSON: Senator Lana Oleen

VICE-CHAIRPERSON: Representative Bill Mason

RANKING MINORITY MEMBER: Senator Mark Gilstrap

OTHER MEMBERS: Senators David Adkins, David Haley, and Nancey Harrington;
Representatives Becky J. Hutchins, Doug Patterson, Tom Sawyer, and Bonnie Sharp

NON-LEGISLATIVE MEMBERS: Governor's Representative—Matt All; Attorney General's
Representative—Julene Miller

STUDY TOPICS

Fifth Annual Report (2003)

December 2003

Senate Federal & State Affairs
Committee
1-12-05
Attachment 2

Joint Committee on State-Tribal Relations

FIFTH ANNUAL REPORT (2003)

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee on State-Tribal Relations make the following recommendations.

- Regarding the tribal law enforcement issue, the Joint Committee recommends that the House Committee on Federal and State Affairs continue to work 2003 House Sub. for SB 9.
- The Joint Committee, with the approval of the Legislative Coordinating Council, has sent a letter to the members of the Kansas Congressional Delegation seeking their support in establishing a Congressional Inquiry or GAO Audit into certain actions of the U.S. Department of Interior which resulted in the Wyandotte Tribe of Oklahoma operating a gaming casino in downtown Kansas City, Kansas.
- The Joint Committee will continue to monitor the controversy over the South Lawrence Trafficway and its possible impact on the Baker Wetlands and Haskell Indian Nations University.
- The Joint Committee will continue to monitor the status of tribal-related litigation. The Joint Committee has requested expenditure information relative to these tribal cases.

Proposed Legislation: None

BACKGROUND

The Joint Committee on State-Tribal Relations was created through the enactment of 1999 HB 2065. The responsibilities and organization of the Joint Committee are summarized below.

The Joint Committee is authorized by statute to:

- establish and transmit to the Governor proposed guidelines reflecting the public policies and state interests that the Joint Committee will consider in reviewing proposed compacts;
- recommend to the Governor that any gaming compact provide for the imposition and collection of state sales and excise taxes on sales of nongaming goods and services to persons other than tribal members and imposition and collection of state income tax on revenues derived from sales of nongaming goods and services;
- hold public hearings on proposed gaming compacts submitted to the Joint Committee by the Governor;
- recommend modification of proposed gaming compacts submitted by the Governor and introduce resolutions approving proposed gaming compacts

and recommend that such resolutions be adopted or be not adopted, or report such resolutions without recommendation, and notify the Governor, in writing, of the Joint Committee's action;

- meet, discuss, and hold hearings on issues concerning state and tribal relations;
- make recommendations on issues of state-tribal relations; and
- introduce such legislation as deemed necessary in performing its functions.

Six members of the Committee constitute a quorum, however, actions of the Committee regarding approval of state-tribal gaming compacts require the affirmative vote of at least eight members, at least four senators, and four representatives. The Committee could report a compact without recommendation on the affirmative vote of any five legislative members.

Annually, the Committee elects its chairperson and vice-chairperson. The chairperson alternates between the House (even years) and Senate (odd years). The ranking minority member is from the same chamber as the chairperson. The Committee is authorized to appoint subcommittees and members may be paid and reimbursed for travel and subsistence for attendance at subcommittee or full Committee meetings.

COMMITTEE ACTIVITIES

The Joint Committee met for four days during the 2003 Interim. Two of the meetings were held in Topeka. One meeting was held at Haskell Indian Nations University in Lawrence. One meeting was held in the Holton City Hall, and also included a tour of the Prairie Band Potawatomi Nation Reservation. The Joint Committee received input on various issues from the four resident Kansas Tribes, and

from state and federal officials who are involved in state-tribal matters.

The Joint Committee reviewed the status of tribal-related bills considered by the 2003 Legislature. The Joint Committee also was given updates on the status of tribal-related litigation in Kansas by Steve Alexander and Brian Johnson, representatives of the Attorney General's Office. The updates reviewed the litigation involving the Wyandotte Tribe of Oklahoma's casino operation in Kansas City, the issuance of tribal license plates, and the taxation of tribal gasoline sales.

The Executive Director of the Kansas Office of Native American Affairs, Gail DuPuis, also provided updated information on the activities of that agency, including developments related to the Governor's Interstate Indian Council and the National American Indian and Alaska Native Heritage Month celebration.

A representative of the National Conference of State Legislatures (NCSL), Andrea Williams, reviewed the current joint project of NCSL and the National Congress of American Indians (NCAI) which focuses on promoting intergovernmental cooperation between states and tribal governments.

The Executive Director of the Kansas State Historical Society, Mary Allman, and other interested conferees reviewed the history of the state historical marker program. Some tribal members had expressed objections to the language used on some of the markers. At the request of the Joint Committee, the interested parties agreed to meet jointly to seek a resolution to the issue. The Joint Committee also received testimony from a representative of the State Historical Society, Christy Davis, on the impact of historic preservation laws on the new casino operation in Kansas City.

The Joint Committee also received testimony from representatives of the Haskell Wetland's Preservation Organization relative

to the proposed new South Lawrence Trafficway (SLT), including Nicholas Luna, Monette Terry, and Yulburton Sandcrane. Some members of the Joint Committee toured the wetlands acreage. The Chief Counsel for the Kansas Department of Transportation, Sally Howard, reviewed the history of the proposed South Lawrence Trafficway project from 1986 to the present. She advised the Joint Committee that on December 12, 2003, the Corps of Engineers released its Record of Decision for the final section of the SLT and a final alignment of the project along 32nd Street.

The Joint Committee also received testimony from various persons associated with the Lewis and Clark Bicentennial Commission, including Chris Howell, Karen Seaberg, and Sheri Wilson. This celebration will occur mostly in the spring and summer of 2004.

The Joint Committee also was given a review by Brent Widick of the various programs of the Department of Social and Rehabilitation Services (SRS) which impact the Native American Tribes. The Joint Committee also was given an update from the Kansas Arts Commission Director David Wilson. Kim Qualls of the Travel and Tourism Division of the Kansas Department of Commerce reviewed efforts and other programs to promote Native American heritage and culture.

The Joint Committee also attended a national conference hosted by the Haskell Indian Nations University relating to "Indian Records for the 21st Century and Beyond: Creating a Tribal/Federal Vision."

The Joint Committee received input on various issues from the four resident Kansas tribes: the Prairie Band Potawatomi Nation of Kansas; the Kickapoo Tribe; the Sac and Fox Nation of Missouri in Kansas and Nebraska; and the Iowa Tribe of Kansas and Nebraska.

The members of the Joint Committee applaud the decision by Chairperson Oleen

to invite representatives of the tribal governments to sit at the Committee table and participate in Committee discussion. Tribal representatives who sat with the committee included: Louis DeRoin, Iowa Tribe; Zach Pahmahmie, Prairie Band Potawatomi Nation; Emily Conklin and John Thomas, Kickapoo Tribe; and Don Pilcher, Sac and Fox Nation.

In addition to its usual review of tribal-related issues, the Joint Committee was charged by the Legislative Coordinating Council (LCC) to review the issue of placing lands into trust.

The charge from the LCC is as follows:

Placing Land into Trust. Study how land is placed in a trust and how that action impacts Kansas with regard to sovereignty issues, the Kansas Act of Admission, the Tenth Amendment to the U.S. Constitution and ongoing litigation with Native American tribes.

In conducting this review, the Joint Committee heard testimony from Steve Alexander of the Attorney General's Office; several Jackson County Commissioners, including Brad Hamilton and Lois Pelton; representatives of the resident tribes, as noted above; and officials with the Bureau of Indian Affairs, including Galen Hubbard of the Horton Office.

The Joint Committee discussed the possibility of contacting the Kansas Congressional Delegation to request that a Congressional inquiry or an audit by the General Accounting Office (GAO) into the actions of the U.S. Department of Interior which led to the Shriner tract in Kansas City, Kansas being taken into trust in such a short time frame. The Joint Committee approved a motion which directed the Chairperson to request the approval of the LCC to authorize the Joint Committee to make such a request of the Kansas Congressional Delegation. The LCC approved the request of the Joint Committee under LCC Policy 33. At its

December 15th meeting, the Joint Committee approved the letter to be sent to the Kansas Congressional Delegation.

The Joint Committee decided to revisit the issue of enhancing the powers and responsibilities of the tribal police officers and tribal police departments. The Joint Committee strongly believes that legislation is needed to improve law enforcement efficiency in those counties which have resident tribal reservations located in the county. The Joint Committee has recommended such legislation for the past four Legislative Sessions. Bills have passed the Senate on at least three occasions, only to fail in the House of Representatives. The Joint Committee again heard testimony from tribal police (J. T. Scott and Sam Grant, Prairie Band Tribal Police Department); county sheriffs (Bruce Tomlinson of Jackson County and Lamar Shoemaker of Brown County); Jackson County commissioners (Brad Hamilton and Lois Pelton); and interested legislators (Representative Becky Hutchins). The Joint Committee is aware that 2003 H. Sub. for SB 9, concerning this issue, has passed the Senate and is currently in the House Committee on Federal and State Affairs.

The Joint Committee received a presentation by representatives of the Intertribal Gaming Management Consortium, including Whitney Damron and Emily Conklin, regarding the proposed new casino project. This is a joint project of the Kickapoo Tribe in Kansas and the Sac and Fox Nation to construct a new casino in the Village West development in western Wyandotte County.

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee believes that more open communication and cooperation between the state and the tribes is the key to improving the state-tribal relationships. The

members believe that the Joint Committee is a useful forum to allow for improved communication and cooperation.

Tribal Law Enforcement. As noted above, the Joint Committee held considerable discussion on the tribal law enforcement issue, and reviewed a proposed balloon amendment to 2003 H. Sub. for SB 9. The Joint Committee reached a consensus that the House Committee on Federal and State Affairs continue to work H. Sub. for SB 9 during the 2004 Session. The Joint Committee continues to support legislation to improve the cooperative efforts of the tribal law enforcement departments and the local police and sheriff's departments and would like to have statutory language in this area. The Joint Committee was favorably impressed by the level of professionalism of tribal police officers.

Letter to Kansas Congressional Delegation. As discussed above, the Joint Committee, with the approval of the Legislative Coordinating Council, has sent a letter to the members of the Kansas Congressional Delegation seeking their support in establishing a Congressional Inquiry or GAO Audit into certain actions of the U.S. Department of Interior which resulted in the Wyandotte Tribe of Oklahoma operating a gaming casino in downtown Kansas City, Kansas.

Baker Wetlands and South Lawrence Trafficway. The Joint Committee heard testimony regarding the controversy over the South Lawrence Trafficway and its possible impact on the Baker Wetlands and Haskell Indian Nations University. The Committee members visited the Baker Wetlands site and received input from members of the Wetlands Preservation Organization. Although the members believe that this is largely a federal issue. The Joint Committee will continue to monitor developments in this area.

Tribal-Related Litigation. The Joint Committee received updates on the status

tribal-related litigation currently ongoing. Due to the expenses, lengthy time frame and topic of litigation involved in these cases, the Joint Committee urges the use of alternative dispute resolution or arbitration to expedite settlement of these issues.

At its meeting on December 15, the Joint Committee requested expenditure information relative to these tribal-related lawsuits. Staff has requested this expenditure information from the Office of the Attorney General and the Department of Revenue. Staff will provide this information to the Joint Committee as it becomes available.

**GAMING COMPACT
BETWEEN
THE SAC AND FOX NATION OF MISSOURI IN KANSAS AND NEBRASKA,
THE KICKAPOO TRIBE OF INDIANS OF THE KICKAPOO RESERVATION
IN KANSAS,
AND
THE STATE OF KANSAS**

Executive Summary

UPDATE—November 10, 2004

This document is a summary of key components of the gaming compact that will be submitted to the Legislative Coordinating Council on Wednesday, November 17, 2004, for its consideration. It contains a summary of selected issues and a brief section-by-section overview.

**Senate Federal & State Affairs
Committee**

1-12-05
Attachment 3

Summary of Selected Issues

Regulation

The State Gaming Agency will have the primary role in the regulation and enforcement of the provisions of the Compact. The State Gaming Agency's authority allows it do the following:

- **Have unrestricted access to the Gaming Facility, its computers, and its records.** This will include "real time read-only" access to the Gaming Enterprise's on-line electronic gaming management system.
- **Inspect and audit the Gaming Enterprise.** The State Gaming Agency may inspect and audit the Gaming Enterprise to monitor compliance with the Compact. In addition, the Gaming Enterprise must commission an independent annual audit of its finances. The State Gaming Agency may coordinate its activities with the Director of the Budget and the Legislative Post Auditor.
- **Order immediate corrective action.** The State Gaming Agency may order any person at the Gaming Facility to take immediate corrective action to resolve a violation of the Compact.
- **Conduct investigations of suspected violations of the Compact.** The State Gaming Agency may conduct investigations of the Gaming Enterprise and any individual for suspected violations of the Compact.
- **Assume responsibility for Tribal Gaming Commission investigations.** The State Gaming Agency may, as it deems necessary, take over any investigation being conducted by the Tribal Gaming Commission for violations of the Compact.
- **Order fines and penalties for violations of the Compact.** The State Gaming Agency may issue fines and penalties upon the Gaming Enterprise, its employees, and any other licensee for violations of the Compact.
- **License all Gaming Employees.** The Gaming Enterprise may not employ any person unless and until the State Gaming Agency performs a thorough background check and issues that person a license. The State Gaming Agency may suspend, condition, or revoke the license of any individual, including top management, for certain violations of the Compact.
- **License all Management Contractors, Manufacturers-Distributors, and Vendors.** The Gaming Enterprise may not enter a contract with any such entities unless and until the State Gaming Agency performs a thorough background check and issues the entity a license. The State Gaming Agency may suspend, condition, or revoke the license of any or these entities for certain violations of the Compact.
- **Register all Non-Gaming Employees.** The Gaming Enterprise may not employ any person for non-gaming activities without registering that person with the State Gaming Agency. The State Gaming Agency may withdraw the registration for any individual who participates in gaming activities without a license.

The Tribal Governments will create a single, joint Tribal Gaming Commission. This Commission will have day-to-day responsibility for ensuring compliance with the Compact. Its powers include, but are not limited to, the following:

- **Have unrestricted access to the Gaming Facility, its computers, and its records.** This will include “real time read-only” access to the Gaming Enterprise’s on-line electronic gaming management system.
- **Inspect and audit the Gaming Enterprise.** The Tribal Gaming Commission may inspect and audit the Gaming Enterprise to monitor compliance with the Compact.
- **Order immediate corrective action.** The State Gaming Agency may order any person at the Gaming Facility to take immediate corrective action to resolve a violation of the Compact.
- **Conduct investigations of suspected violations of the Compact.** The Tribal Gaming Commission may conduct investigations of the Gaming Enterprise and any individual for suspected violations of the Compact. This authority is subject to the State Gaming Agency’s authority to take over any Tribal Gaming Commission investigation.
- **Develop and enforce the excluded persons list.** Subject to State Gaming Agency review, the Tribal Gaming Commission shall develop and enforce the list of persons excluded from the Gaming Facility because they pose a threat to the integrity of the operation.

The State Gaming Agency and the Tribal Gaming Commission are expected to work cooperatively to enforce the Compact and its appendices. They will share information and resources to ensure the integrity of the gaming operation. If there is a conflict between the State Gaming Agency and the Tribal Gaming Commission with regard to the conduct of an investigation or the imposition of corrective action or fine, the decision of the State Gaming Agency, as the primary regulatory authority, shall control.

Gaming Oversight Authority

To aid in the regulatory process, the State of Kansas and the Tribes will jointly establish the Gaming Oversight Authority to serve as an appeals entity to review and resolve certain disputes as provided under the Compact.

Key provisions of the Gaming Oversight Authority include:

- The Gaming Oversight Authority shall be composed of five members. The Governor shall appoint two members and the Chair. Each Tribe shall appoint one member.
- Members shall be subject to a background review. The Governor’s appointees shall be subject to confirmation by the Kansas Senate.
- The members will serve three-year terms.

- Members shall have legal, financial and gaming expertise, relevant law enforcement experience or practical business experience.
- Certain individuals will be ineligible for appointment, including the following: members of the Tribes; current state employees; former members of the Kansas Racing and Gaming Commission or the State Gaming Agency; any person who participated in the making of the Compact; and any person with a financial interest in any business engaged in the gaming industry and/or related limitations.
- The Governor shall appoint the Chair from a four person panel of potential appointees nominated, one each, by the other four members of the Gaming Oversight Authority.
- There is no initial residency requirement, but appointees must become Kansas residents upon appointment, or, in the case of Governor's appointees, confirmation.
- Costs of the Gaming Oversight Authority shall be shared equally by the State and the Tribes.
- Members of the Gaming Oversight Authority are prohibited from gambling during their term in office.

Revenue Sharing

The Tribes have agreed to make significant contributions of revenue to the State of Kansas and the Unified Government of Wyandotte County and Kansas City, Kansas. These contributions are in exchange for (1) the Governor's agreement to allow the Tribes to locate the Gaming Facility at the Kansas Speedway site, and (2) market protections for the Gaming Facility, as described in the next section.

The Tribes have agreed to contribute the following revenue to the state:

- 12% of the first \$100 million of adjusted gross gaming revenue;
- 22% of adjusted gross gaming revenue beyond \$100 million;
- 27% of Keno revenue; and
- An amount equal to 4% of gross gaming revenue from the Tribes' existing casinos.

In March 2004, the Kansas Lottery received a report on the Kansas gaming market from Christiansen Capital Advisers, L.L.C., a leader in the gaming industry. This report estimated that a destination resort casino located in Kansas City, Kansas, if no other additional gaming facilities were added in the market, would generate \$288 million in gross gaming revenue. If that estimate held true, the revenue sharing called for under the Compact would generate over \$50 million for the state. The Christiansen report estimated that, if 750 video lottery terminals were added to the Woodlands track facility, a destination resort casino would generate \$235 million in gross gaming revenue. If that estimate held true, the revenue sharing called for under the Compact would generate over \$40 million for the state.

In addition, a separate agreement between the Tribes and the Unified Government of Wyandotte County and Kansas City, Kansas provides for revenue sharing payments of 4.2% of adjusted gross gaming revenues for the first seven years of operation and increases to 6.5% of AGGR in the eighth year and beyond. This will likely generate in excess of \$10 million for the Unified Government.

Together, the State of Kansas and the Unified Government will receive approximately 25% of adjusted gross gaming revenues from the Tribal Casino, which could exceed \$60 million annually. The percentage of revenue sharing between the Tribes, the State, and the local government would place it at the high end of all revenue sharing agreements for tribal casinos in the United States.

Market Protections and Limitations on Future Expansion of Gaming in Kansas.

In exchange for the revenue sharing described above, the Compact would place limitations on additional gaming in Kansas. To retain the full amount of revenue sharing called for under the Compact, the State has agreed to limit gaming in Kansas as follows:

- No more than 600 state-owned and operated slot machines or video lottery terminals at the following parimutuel dog and horse racing tracks: The Woodlands in Kansas City, the Camptown Racetrack in Frontenac, and the Wichita Greyhound Park.
- No State concurrence to place land in trust for Class III gaming at a tribal casino within 100 miles of the Gaming Enterprise.
- If the State authorized more state-owned and operated slot machines than described above or affirmatively allowed a tribal casino within 100 miles of the Gaming Enterprise, the state would forfeit its revenue from the tribal casino in Kansas City.

It should be noted that these market limitations would not apply to additional tribal facilities more than 100 miles from the Gaming Enterprise, or to privately owned gaming facilities authorized as part of an amendment to the Kansas Constitution.

Sunset of Existing Tribal Compacts

The gaming compacts for all four Resident Tribes currently exist in perpetuity. As part of the negotiations for this Compact, The Kickapoo Tribe and the Sac and Fox Nation have agreed to a sunset of the compacts for their existing casinos. Because the Tribes are financing their Kansas City project themselves without outside partners or participation, they will rely upon the revenue stream of their existing facilities for a period of years and

then have agreed to a sunset of those existing facilities that would take effect seven years after the Kansas City Tribal Casino is opened.

To account for the dislocation and job losses resulting from the closure of these two facilities, the compact requires the state to establish the Brown County Economic Development Fund. This Fund will be governed by a seven-person governing board, consisting of three appointees from Brown County, one from each tribe, and two from the state. The state must devote at least half of the revenues it receives based on 4% of existing casino revenue.

Expiration and Termination of the New Compact.

The Compact will contain a term of years to allow the State or the Tribes to terminate upon notice to the other party. The initial term of the Compact will be 12 years from the date of opening to the public. After the initial 12-year term, it will be automatically renewable for successive five-year terms.

In addition, the Compact may be terminated under certain circumstances, including (1) by mutual consent of the parties, (2) upon material breach of the Compact by the Tribes, (3) if the gaming allowed under the Compact is declared on final appeal to be against the public policy of the State of Kansas, or (4) if the trust land application is not approved within two years of publication of the compact in the federal register.

Regulatory Costs

As with the existing tribal compacts, the Tribes agree to reimburse the State for costs of regulation. Before the Gaming Facility opens, the Tribes will pay the State \$1,500,000 for regulation. During the first year of operation, the Tribes will pay the State the greater of \$1,750,000 or 1% of adjusted gross gaming revenue. After the first year of operation, the Tribes will pay the State 1% of adjusted gross gaming revenue. If the State Gaming Agency's costs are below 1% of adjusted gross gaming revenue, the State can retain the additional amount. If the State Gaming Agency's costs are above 1% of adjusted gross gaming revenue, the additional amount will come from the State's other share of revenues.

Public Reports on the Gaming Enterprise

The Gaming Enterprise will be required to submit to the State Gaming Agency monthly statistical reports similar to reports published monthly for casinos operating in the State of Missouri. These reports will contain information related to the types and units of games offered, amount of drop for each game, the gross gaming revenue for each type of

table game, types and units of electronic gaming devices offered and the slot handle of such games and related information. These reports will be available to the public.

The final orders of the State Gaming Agency will be public records, except for those dealing with minor infractions, which will be reported in summary. The final orders of the Gaming Oversight Authority will be public records.

The State Gaming Agency will be required to submit an annual report based on this information to the Governor and the Legislature.

Limitations of Tribal Sovereignty in the Compact

Although the Tribal Casino will be operated on land taken into trust for the purposes of gaming and thus will be Indian Trust Land, the Tribes have agreed to certain irrevocable waivers of sovereign immunity in the Compact in the following areas:

- Disputes arising between the parties regarding the provisions of the Compact;
- Actions to enforce final Gaming Oversight Authority or court orders issued pursuant to the Compact;
- Enforcement of public health, safety, building, and fire codes at the Gaming Enterprise;
- Tort actions against the Gaming Enterprise (the Tribes agree to be treated as a Governmental Entity under the Kansas Tort Claims Act);
- Enforcement of Kansas Law on Unemployment Compensation, Worker's Compensation, Minimum Wage and Maximum Hours.
- Enforcement of all laws, rules and regulations of the Division of Alcoholic Beverage Control.

Problem Gambling

The Gaming Enterprise will implement a Problem Gambler Self Exclusion Policy whereby a patron may request to be placed on a self-exclusion list. Such policy shall be subject to State Gaming Agency approval.

Gaming employees shall receive appropriate training in the symptoms of problem gambling and notify designated management personnel as to the identity of patrons displaying such symptoms. Management will affirmatively and confidentially ask the patron if he or she wishes to be placed on the self-exclusion list.

Credit card terminals shall not be located at any electronic game or table game position. Any ATM or credit card terminal shall be placed in a location requiring the patron to leave the gaming area to access the terminal.

In addition to paying for the costs of implementing these provisions, the Gaming Enterprise shall contribute .375% of its adjusted gross gaming revenue to the Problem Gambling Fund created under K.S.A. 79-4805.

Brief Section-by-Section Overview

Section 1: Title

This section is self-explanatory and, one would hope, uncontroversial.

Section 2: Guiding Principles for Interpretation of the Compact

This section describes the Compact's overall guiding policy and purpose, the law applicable to the Compact, and certain disclaimers. It makes clear that this Compact is not to be considered precedent for any future compact, and that it satisfies the State's duty to negotiate with both Tribes.

Section 3: Definitions.

This section lists and defines all the key terms used in the Compact.

Section 4: Authorized and Prohibited Activities.

This section sets forth which games are authorized and prohibited by the Compact. It prohibits certain individuals from participating in the gaming, and places limitations on the credit that may be offered to patrons. It also limits the sorts of ancillary services that may be offered at the Destination Resort.

Section 5: Persons Bound

This section describes the individuals and entities bound under the Compact for both the State and Tribes.

Section 6: Gaming Policies & Procedures and Standards of Operation & Management

This section describes the method for adopting certain policies and procedures for operation of the Gaming Enterprise. It requires the Gaming Enterprise to, among other things, keep certain logs and records, provide office space to the State Gaming Agency, provide the State Gaming Agency with real time read-only access to its gaming computer system, and submit the surveillance plan to the State Gaming Agency for approval.

Section 7: Tribal Role in Civil Regulation of Class III Gaming.

This section defines the role of the Tribal Gaming Commission in enforcing certain provisions of the Compact upon the Gaming Enterprise. It defines the relationship and interaction between the Tribal Gaming Commission and the State Gaming Agency.

Section 8: Tribal-State Biannual Meetings.

This section calls for biannual meetings between the State Gaming Agency and the Tribal Gaming Commission to improve their working relationship.

Section 9: State Civil Regulation of Class III Gaming.

This section defines the powers and responsibilities of the State Gaming Agency in regulating the Gaming Enterprise.

Section 10: Enforcement of Criminal Laws.

This section describes the jurisdiction the various governmental law enforcement agencies have at the Destination Resort.

Section 11: Licensing, Registration and Background Investigation of Employees

This section sets forth who must receive a license from the State Gaming Agency, the process of obtaining a license, the standards for a background investigation, the qualifications necessary to receive a certification for temporary employment, and the registration of Non-Gaming Employees.

Section 12: Licensing of Management Contractors, Primary Management Officials, Manufacturers/Distributors and Vendors.

This section sets forth which outside entities must receive a license from the State Gaming Agency, and the process of obtaining a license.

Section 13: Relevant Information.

This section lists the information necessary for the State Gaming Agency to conduct a background investigation, which is required to obtain a license.

Section 14: Denial of License Application.

This section lists the circumstances under which the State Gaming Agency shall deny a license application.

Section 15: Revocation or Suspension of License.

This section lists the circumstances under which the State Gaming Agency may revoke or suspend a license.

Section 16: Identification Cards.

This section describes the requirements for licensees to wear identification cards while at the Destination Resort.

Section 17: Management Contract

This section describes the process for the tribes to enter a management contract for management of the Gaming Enterprise. The Tribes do not currently intend to enter a management contract.

Section 18: Accounting and Audit Procedures.

This section requires an annual audit of the Gaming Enterprise and authorizes other audits.

Section 19: Gaming Enterprise Records.

This section lists the records the Gaming Enterprise must keep. It also requires the Gaming Enterprise to submit to the State Gaming Agency a monthly report on gaming statistics.

Section 20: Regulatory Costs.

This section describes the method and amounts the Gaming Enterprise will pay the State for the costs of regulation.

Section 21: Codes and Laws Applicable to the Gaming Enterprise and Destination Resort.

This section makes the Destination Resort subject to a variety of federal, state, and local laws and codes, including health, safety, fire, and building codes; alcohol and cereal malt beverage laws; unemployment compensation, workers compensation, minimum wage, and maximum hours laws; and the Kansas Tort Claims Act. It also sets forth the Gaming Enterprise's responsibilities for addressing problem gambling.

Section 22: Contributions to the State.

This section describes the revenue sharing arrangement between the Gaming Enterprise and the State. It describes the market protections and accompanying penalties the State has offered in exchange for the revenue sharing.

Section 23: Use of Net Revenues by the Tribes.

This section defines the manner in which the Tribes may use the net revenues from the Gaming Enterprise. It is required by the Indian Gaming Regulatory Act.

Section 24: Notices.

This section describes the process through which the parties may give the others notice to trigger the dispute resolution process, among other things.

Section 25: Dispute Resolution and Compact Enforcement.

This section describes the Gaming Oversight Authority, including its membership, staff, budget, and authority. It describes the ability of the parties to enforce the Compact in court. It contains waivers of sovereign immunity to enforce the Compact on the Tribes and the State.

Section 26: Reservation of Rights.

This section sets forth certain rights that are reserved to the Tribes and the State, and certain disclaimers on the effect of the Compact. It also requires the Tribes to withhold individual income tax for gaming winnings.

Section 27. Amendment of 1995 Compacts.

This section amends the 1995 Compacts with the Tribes to contain an expiration date seven years from the opening of the Gaming Facility to the public. It requires an economic impact study for the communities surrounding the existing casinos.

Section 28: Duration and Termination

This section sets the term of the Compact at 12 years from the date of the opening of the Gaming Facility to the public. It provides five-year automatic renewals, unless either party chooses to terminate. It also allows for termination of the Compact under certain circumstances, including material breach by the Tribes.

Section 29: Entire Agreement.

This section states that the provisions of the Compact are the entire agreement between the parties, and that the Compact take precedence over the Appendices or the agreement between the Tribes and the Unified Government of Wyandotte County.

Section 30: No Assignment.

This section prevents the parties from assigning their rights under the Compact.

Section 31: Amendment.

This section provides a method for amending the Compact.

Section 32: Date of Laws Adopted Herein.

This section sets the date of laws adopted in the Compact at July 1, 2004.

Section 33: Consistency With State Statutes.

This section describes the relationship between state gaming laws, IGRA, and this Compact.

Section 34: Severability.

This section provides that the compact is an indivisible whole. If any provision is found to be unlawful, the entire Compact is void.

Section 35: Authority to Execute.

This section states that those who sign the Compact have authority to do so.

Joint Committee on State-Tribal Relations

SIXTH ANNUAL REPORT (2004)

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee on State-Tribal Relations reported the proposed tribal gaming compact without recommendation to the Legislative Coordinating Council.

Proposed Legislation: None.

BACKGROUND

The Joint Committee on State-Tribal Relations was created through the enactment of 1999 HB 2065. The responsibilities and organization of the Joint Committee are summarized below.

The Joint Committee is authorized by statute to:

- establish and transmit to the Governor proposed guidelines reflecting the public policies and state interests that the Joint Committee will consider in reviewing proposed compacts;
- recommend to the Governor that any gaming compact provide for the imposition and collection of state sales and excise taxes on sales of nongaming goods and services to persons other than tribal members and imposition and collection of state income tax on revenues derived from sales of nongaming goods and services;
- hold public hearings on proposed gaming compacts submitted to the Joint Committee by the Governor;
- recommend modification of proposed gaming compacts submitted by the Governor and introduce resolutions approving proposed gaming compacts and recommend that such resolutions be adopted or be not adopted, or report such resolutions

without recommendation, and notify the Governor, in writing, of the Joint Committee's action;

- meet, discuss, and hold hearings on issues concerning state and tribal relations;
- make recommendations on issues of state-tribal relations; and
- introduce such legislation as deemed necessary in performing its functions.

Six members of the Committee constitute a quorum, however, actions of the Committee regarding approval of state-tribal gaming compacts require the affirmative vote of at least eight members, at least four senators, and four representatives. The Committee could report a compact without recommendation on the affirmative vote of any five legislative members.

Annually, the Committee elects its chairperson and vice-chairperson. The chairperson alternates between the House (even years) and Senate (odd years). The ranking minority member is from the same chamber as the chairperson. The Committee is authorized to appoint subcommittees and members may be paid and reimbursed for travel and subsistence for attendance at subcommittee or full Committee meetings.

COMMITTEE ACTIVITIES

The Joint Committee met for four days during the 2004 Interim in Topeka. At the first meeting, pursuant to statute, the Committee elected Representative Mason as the Chair, Senator Oleen as the Vice Chair, and Representative Sharp as the Ranking Minority member.

The Committee was then briefed on the statutory framework, including a time line for the tribal gaming compact to be approved or disapproved by the Committee, the Governor, and the Legislature. Matt All, General Counsel, Governor's Office, briefly updated the Committee on the status of the proposed new gaming compact between the Sac & Fox Nation of Missouri in Kansas and Nebraska, the Kickapoo Tribe in Kansas, and the State of Kansas. He informed the Committee that negotiations would be completed and the tribal compact would be presented to the Committee at the October meeting.

The Committee next heard from the Executive Director of the Kansas State Gaming Agency (KSGA) who provided an overview of the agency's activities for the past fiscal year. Also, the Committee received a letter from the Executive Director responding to a letter from the Chairperson of the Sac & Fox Nation who raised concerns about certain provisions in the KSGA's 2005 fiscal year budget.

The Chief of the Prairie Band Potawatomi Police Department updated the Committee on the success of 2004 Senate Bill No. 9, which allowed tribal law enforcement officers to exercise powers of law enforcement officers anywhere within the exterior limits of the reservations under certain circumstances.

The October 20 and 21, 2004 meeting opened with a review of the statutory framework and Attorney General Opinion No. 2004-29, which stated that the Committee's authority to act on a compact is not precluded if the gaming is conducted on land other than land on a tribal reservation.

Matt All, presented an Executive Summary of the proposed compact to Committee members.

The main provisions of the proposed compact would:

- require the State Gaming Agency to play the primary role in the regulation and enforcement of the compact;
- establish a Gaming Oversight Authority to serve as an appeal for disputes;
- require the Sac & Fox Nation of Missouri in Kansas and the Kickapoo Tribe in Kansas existing compacts to expire in seven years;
- provide an initial term of 12 years for the compact with automatic five-year renewals unless non-renewal notices are made by either party;
- require the tribes to give up certain irrevocable waivers of sovereign immunity;
- establish a revenue sharing mechanism between the tribes and the State;
- give exclusionary rights and market protections to the tribes; and
- provide for a share of the revenue to be placed in the Problem Gambling Fund.

The Committee was informed that the federal government would have to take lands in trust for gaming purposes, and the compact would have to be approved by the Legislature before the tribes could commence gaming. The Legislature cannot amend the proposed compact, but can recommend modifications. Also, the compact would not prevent other tribes from negotiating a compact with the State of Kansas.

The Chair of the Kickapoo Tribe in Kansas, and the Chair, Vice Chair, and a Tribal Council member of the Sac & Fox Nation of Mis-

souri in Kansas and Nebraska told the Committee that tribes supported the proposed compact.

The Committee was presented with an overview of the proposed casino, a market study, and an update on the progress by a representative of the compact tribes. The representative said the tribes have secured 80 acres in Wyandotte County located adjacent to the Kansas Speedway and have designated 40 acres for the proposed casino. He also informed the Committee that the Unified Government of Wyandotte County, and the tribes have a Memorandum of Agreement for the establishment of the casino in Wyandotte County.

The Committee then heard from the following conferees on the proposed compact.

- The President and CEO of the Gillmann Group and the Chief of the Delaware Tribe updated the Committee on the Delaware's proposal to build a casino in Wyandotte County.
- A representative and members of the Prairie Band Potawatomi Nation expressed their concerns to the Committee over the proposed compact. They recommended the two existing casinos should be closed down before the proposed new casino opened in Wyandotte County.

Several opponents of the proposed compact included representatives of: Stand Up for Kansas; Brown County Commissioners; the cities of Bonner Springs and Edwardsville; the River Falls Gaming LLC; and the Kansas Greyhound Association. The reasons given by the conferees opposing the compact were the economic impact on Brown County from the closing of the existing casinos, economic impact to the thoroughbred industry and racing at the tracks; the exclusivity clause; and the general negative impact of gaming.

Proponents of the compact included: the Unified Government of Wyandotte

County/Kansas City; the Wyandotte Chamber of Commerce; the Greater Kansas City Building and Construction Trade Council, the Tri County Labor Council of Eastern Kansas AFL-CIO, and Construction Labor Local 1290. Conferees expressed support for the casino because of economic development through construction jobs and increased employment when the casino is completed.

The Executive Director of the Kansas State Gaming Agency told the Committee that the Agency was comfortable with the proposed compact. He said that, as the primary regulator, the Agency would require additional employees and that the one percent regulatory fee would cover the additional expenses.

A Committee member and representatives of Jackson County expressed concerns about the economic impact to Jackson County if the two existing casinos were closed. They recommended keeping the existing casinos open, or a revenue sharing contract with the tribes and Jackson County.

Committee discussion followed and the following recommendations were made by the Committee to the Governor for renegotiation of the compact:

- a provision for expiration of the compact if the United States Secretary of the Interior does not approve the compact within two years of submission, or if the compact is not approved within two years after the lands are taken into trust;
- a requirement for the submission to the Governor and the Legislature of an annual financial report;
- a provision that the State shall forfeit all revenue sharing if the State allows any additional state-owned and operated electronic gaming devices anywhere in the state;

- a requirement that the annual gaming activity audits shall be coordinated with the Director of Budget and the Legislative Post Auditor;
- a requirement that all employees, contractors, and subcontractors of the gaming enterprise shall be subject to the payment of taxes as imposed by Executive Order 04-03 and subsection (c) of KSA 2003 Supp. 75-3740 and that the gaming enterprise shall offer employee benefits comparable to government guidelines for companies bidding on state contracts;
- a requirement that gubernatorial appointments to the Gaming Oversight Authority shall be subject to confirmation by the Senate and residency requirement upon confirmation;
- a provision requiring revenue sharing between the Sac & Fox Nation of Missouri in Kansas and Nebraska and the Kickapoo Tribe in Kansas casinos that will be closing, and the counties that will be economically impacted by those closings;
- a requirement that the Sac & Fox Nation of Missouri in Kansas and Nebraska and the Kickapoo Tribe in Kansas existing casinos will close in five years instead of seven years as stated in the compact; and
- a provision to increase the revenue to the Problem Gambling Fund and address charitable contribution requirements.
- a provision that the compact would terminate if the land is not taken into trust within two years of the publication of the compact in the *Federal Register*;
- a requirement to have an annual financial report to the Governor and the Legislature;
- a provision that would require the inclusion of the Director of Budget and the Legislative Post Auditor in the audit activities of the State Gaming Agency;
- a provision to allow only 600 state-owned and operated electronic gaming devices at each of the following locations—Woodlands, Wichita Greyhound Park, and Camptown Racetrack (the state would forfeit any revenue sharing if more than 1,800 state-owned and operated electronic gaming devices were allowed anywhere in the state);
- a requirement that all licensees be current on state taxes (no language was adopted dealing with employee benefits);
- a requirement that the Governor's appointments to the Gaming Oversight Authority be subject to Senate confirmations and residency requirements;
- a requirement that the State establish a Brown County Economic Development Fund to be funded by at least 50 percent of the amount the state receives under the compact based on revenue from the existing casinos (4 percent);
- a provision that the language be retained in the compact that requires the existing casinos to close within seven years after the proposed casino is opened;
- a requirement to increase contributions to the Problem Gambling Fund to 0.375 percent from 0.25 percent of adjusted gross gaming revenues; and
- no provision for required charitable contributions was included.

At the November meeting, the Governor's General Counsel informed the Committee of the Governor's renegotiations regarding issues that the Committee recommended for modification.

The renegotiations between the Governor and the Sac & Fox Nation of Missouri in Kansas and Nebraska and the Kickapoo Tribe in Kansas casinos were presented to the Committee. They included:

Six members of the Committee constitute a quorum, however, actions of the Committee regarding approval of state-tribal gaming compacts require the affirmative vote of at least eight members, at least four senators, and four representatives. The Committee could report a compact without recommendation on the affirmative vote of any five legislative members.

The Committee discussed the renegotiated compact and voted 6-2 to send the compact without recommendation to the Legislative Coordinating Council.

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee on State-Tribal Relations reported the proposed tribal gaming compact without recommendation.

April 24, 2003

A Brief History of Gaming in Kansas

Overview

Kansas statutes currently provide for the collection and allocation of revenue from three types of gambling: the Kansas Lottery, parimutuel wagering on dog and horse races, and charitable bingo. In addition, the state is reimbursed for certain expenditures made under provisions of the tribal-state gaming compacts which regulate Indian casino gaming. Slightly over 30 percent of state revenue from gambling is used to operate the state agencies charged with licensing, regulating, and conducting (in the case of the Kansas Lottery) legal gambling in Kansas.

Kansas Lottery

Lottery History. In 1986, a constitutional amendment to provide for a state-owned lottery was approved by the voters of Kansas by a vote of 515,893 to 291,411. The 1987 Kansas Legislature approved implementing legislation which created a new state agency, the Kansas Lottery, to operate the state lottery. The legislation also established a five-member Lottery Commission to oversee the operation of the lottery; required that at least 45 percent of the money collected from ticket sales be awarded as prizes and at least 30 percent of the money collected be transferred to the State Gaming Revenues Fund (SGRF); exempted lottery tickets from the sales tax; and allowed liquor stores to sell lottery tickets.

The constitutional amendment also contained a sunset provision which would have prohibited operation of the state lottery in 1990 unless a concurrent resolution authorizing such operation was adopted by both chambers of the Kansas Legislature during the 1990 Session. 1990 SCR 1646 was adopted to continue the operation of the lottery. The lottery has been subject to sunset in 1992, 1996, and 2002. In each instance, the Kansas Legislature addressed the issue of continuing the lottery. The most recent extension occurred when the 2001 Legislature extended the lottery until 2008. The bill also required that a security audit of the Kansas Lottery be conducted at least once every three years; responsibility for these security audits was placed under the Legislative Post Audit Act. The 2001 legislation also placed several limitations and restrictions on the operation of the Kansas Lottery.

Lottery Revenue. Receipts from the sale of lottery tickets are deposited by the Executive Director of the Kansas Lottery in the Lottery Operating Fund in the state treasury. Statutorily, moneys in that fund are used to support the operation of the lottery; to pay prizes to lottery winners; and to provide funding for correctional facilities, juvenile facilities, and economic development via transfers to the SGRF. A minimum of 45 percent of net monthly receipts from the sale of lottery tickets must be awarded as prizes, and at least 30 percent

Senate Federal & State Affairs

Committee

1-12-05

Attachment 5

of net monthly receipts must be credited to the SGRF. Past legislatures have frequently transferred additional amounts to the SGRF.

Lottery revenues have been used for various purposes over the years. Most notably, transfers of lottery revenue were made to support statewide reappraisal in the 1980s. For a five-year period, transfers were made from the Lottery Operating Fund to finance the Kansas Bureau of Investigation's gaming investigation unit. Some state revenue from both the State Lottery and parimutuel wagering is transferred to the SGRF. No more than \$50 million can be credited to the SGRF in any fiscal year; amounts in excess of \$50 million are credited to the State General Fund.

The 2000 Legislature modified the transfer slightly by mandating a transfer to the new Problem Gambling Grant Fund. Beginning in FY 2001, the amounts to be transferred are as follows:

- Economic Development Initiatives Fund—\$42,432,000
- Correctional Institutions Building Fund—\$4,992,000
- Juvenile Detention Facilities Fund—\$2,496,000
- Problem Gambling Grant Fund—\$80,000

Appropriations from gaming revenues in support of education-related programs are made from the Economic Development Initiatives Fund (EDIF). Approved FY 2003 expenditures from the EDIF in support of education are summarized below.

- Department of Education/State Board of Regents—\$8.89 million
- Kansas Technology Enterprise Corporation—\$11.59 million
- Adjutant General Educational Assistance Program—\$243,342

The approved FY 2003 budget for the Kansas Lottery includes 87.8 FTE positions and expenditures of \$145.2 million, which is composed of \$20.9 million for operating the lottery and \$124.3 million for prizes and retailer commissions. Over the 15-year existence of the Kansas Lottery and parimutuel wagering, a total of \$85.5 million in regular and special transfers has been transferred to the State General Fund. Total regular gaming transfers from the SGRF over that period exceed \$680.5 million, which includes transfers to the EDIF (\$507.4 million); County Reappraisal Fund (\$15.9 million); State General Fund (\$79.5 million); Juvenile Detention Fund (\$17.5 million); Correctional Institutions Building Fund (\$60.1 million); and Problem Gambling Grant Fund (\$160,000).

Parimutuel Wagering

Parimutuel Wagering History. The voters of Kansas approved a constitutional amendment in 1986 by a vote of 483,944 to 324,123 to authorize the Legislature to permit, regulate, license, and tax the operation of horse and dog racing by *bona fide* nonprofit organizations and parimutuel wagering thereon. The following year the Legislature enacted implementing legislation, the Kansas Parimutuel Racing Act. The act created the Kansas Racing Commission, composed of five Kansas residents, which is authorized to license and regulate all aspects of racing and parimutuel wagering in Kansas. The act grants the Commission broad authority to regulate the racing industry and establishes a number of prohibited acts. Under the act, only nonprofit organizations may be licensed to conduct races and the licenses may be for an exclusive geographic area. The act also created a rather complex formula for taxing the wagering; the formula uses as a tax base a portion of the moneys wagered; and also imposes an admission tax.

The Kansas Racing and Gaming Commission (KRGC) is made up of two separate agencies. The Racing Commission regulates parimutuel greyhound and horse racing; while the State Gaming Agency (SGA) monitors the Native American casinos operating under the tribal-state gaming compacts.

Currently, there are two parimutuel racetracks operating in Kansas: the Woodlands located in Kansas City and the Wichita Greyhound Park in Wichita. The parimutuel track located in Frontenac, Camptown Greyhound Park, has been closed since November 2000. Parimutuel horse racing is also offered at two county fair locations: Eureka Downs in Eureka and Anthony Downs in Anthony.

The KRGC exercises regulatory power over all locations in the state which offer parimutuel wagering. This regulation includes issuing licenses to individuals, overseeing the operation of the races, and auditing all monetary issues related to the wagering. KRGC is funded through a tax on parimutuel wagering, fees charged for licensing, an admission tax, and fines levied by the Commission. Currently, the Commission is authorized 43.0 FTE employees.

A 1992 amendment to the Parimutuel Racing Act provided for simulcasting of both interstate and intrastate horse and greyhound races in Kansas, and allowed parimutuel wagering on simulcast races. The term "simulcast" means a live audio-visual broadcast of an actual horse or greyhound race at the time it is run. The Commission is given broad authority to regulate simulcast racing and wagering. In 2002, the parimutuel wagering handle totaled \$110.8 million. Of this total, \$27.2 million was from live greyhound and horse racing, and the remaining \$83.6 million came from wagering on simulcast races received at the racetracks.

Tax revenues generated by parimutuel wagering have generally been in decline in recent years. In FY 1996, the parimutuel tax generated \$5,232,000; in FY 2000 this figure totaled \$4,239,000. The tax in FY 2001 was \$3,973,000 and had declined to \$3,813,000 in FY 2002.

Another provision of the parimutuel act provides for the transfer of tax revenues from the State Racing Fund to the SGRF of any moneys in excess of amounts required for

operating expenditures. This transfer to the SGRF reached an historical high in FY 1991 of \$7.577 million, but has declined sharply in recent years. For FY 2001, the transfer was \$426,605, and for FY 2002 had fallen to \$343,724.

Charitable Bingo

Charitable Bingo History. A constitutional amendment was approved by the voters of Kansas (499,701 to 210,052) in 1974 to authorize the Legislature to regulate, license, and tax the operation and conduct of games of bingo by certain nonprofit organizations. The groups must be *bona fide* nonprofit religious, charitable, fraternal, educational, or veterans organizations. The Legislature adopted implementing legislation the following year to regulate, license, and tax charitable bingo games. The bingo constitutional amendment was again amended in 1995 to authorize games of "instant bingo."

The general administration of the bingo statutes is vested with the Secretary of Revenue, who may adopt rules and regulations to enforce the act. The Director of Taxation is charged with specific duties related to the taxation of bingo. A 2000 amendment to the bingo statutes created the new position of Administrator of Charitable Gaming to oversee enforcement of the bingo laws.

There are three types of regulated entities in the charitable bingo industry: licensed nonprofit organizations; registered premises lessors; and registered bingo card distributors. A nonprofit organization is a group which is eligible to conduct bingo games, such as an American Legion post or a church group. A premises lessor is the owner or lessor of premises where a nonprofit organization may conduct bingo games. A bingo card distributor is a person or entity that sells instant bingo tickets and bingo cards/disposable bingo faces to nonprofit organizations.

The bingo laws provide stringent criteria in regard to what type of nonprofit organization can be awarded a license. Also, the bingo laws and associated rules and regulations cover many aspects of the operation of bingo games, including the frequency of games, limits on prizes awarded, and detailed required recordkeeping. There are both civil and criminal penalties for operating bingo games in violation of the law.

2000 Bingo Amendments. Substantial amendments were made by the 2000 Legislature through the enactment of Sub. for HB 2013. The bill created a new position of Administrator of Charitable Gaming, and generally phased out the use of hard cards over a three-year period. The bill also phased out the prior bingo tax of 3 percent on gross receipts, in favor of a new tax on disposable paper bingo faces at 0.2 cents per face. This tax is collected and paid by the distributor, who may retain 2 percent of the tax due as an administrative payment.

The allocation of bingo tax revenue was changed from a formula which allocated equal shares to the State General Fund, the Department of Revenue, and local units; the new formula allocates two-thirds to the State General Fund and one-third to the Bingo Regulation Fund. The bill also mandated use of \$20,000 annually from the Bingo Regulation Fund for a problem gambling program. The bill also phased out the state and

local sales tax on licensees. Finally, the bill authorized several new types of bingo games and drawings for door prizes.

Bingo tax revenues have, in general, been declining in recent years. In FY 1997, the bingo enforcement tax generated \$1,055,000. In FY 1999, this figure had dropped to \$979,000. The bingo tax generated \$778,000 in FY 2001 and \$680,000 in FY 2002.

Indian Casino Gaming

History of Indian Casino Gaming. In the mid-1990s, the State of Kansas and each of the four resident tribes in Kansas entered into tribal-state gaming compacts to permit Class III (casino) gaming at tribal casinos. In accordance with the federal Indian Gaming Regulatory Act, all four of the compacts approved by the Kansas Legislature in 1995 were forwarded to the Bureau of Indian Affairs and were approved. At the present time, all four resident tribes have opened and are operating a casino gaming facility. The Kickapoo Tribe was the first to open a casino (the Golden Eagle Casino) in May 1996. The Prairie Band Potawatomi Nation opened a temporary facility in October 1996, and then later opened a permanent facility (Harrah's Prairie Band Casino) in January 1998. The Sac and Fox Tribe opened the Sac and Fox Casino in February 1997. The Iowa Tribe opened a temporary facility in May 1998, and then later opened a permanent facility (Casino White Cloud) in December 1998. All of the facilities, except Casino White Cloud, are open 24 hours a day.

Each of the casinos varies in size and the number of games they offer to the public. The Golden Eagle Casino has approximately 700 electronic gaming devices (slot machines) and 16 table games. Harrah's Prairie Band Casino has approximately 1,000 slot machines and 35 table games. The Sac and Fox Casino has approximately 475 slot machines and six table games. Casino White Cloud has 350 slot machines and six table games. Financial information concerning the operation of the four casinos is confidential.

The SGA was created by executive order in August 1995 as required by the tribal-state gaming compacts. During the 1996 Legislative Session, the agency was made a part of the KRGC through the passage of the Tribal Gaming Oversight Act. The SGA currently is authorized 21.0 FTE positions. The gaming compacts define the relationship between the SGA and the tribes—the actual day-to-day regulation of the gaming facilities is performed by the tribal gaming commissions. Enforcement agents of the SGA are also in the facilities on a daily basis and have free access to all areas of the gaming facility, as well as access to all records kept in the facility. The compacts also require the SGA to conduct background investigations on all gaming employees, manufacturers of gaming supplies and equipment, and gaming management companies and consultants.

The SGA is funded through an assessment process established by the compacts to reimburse the State of Kansas for the costs it incurs for regulation of the casinos. The assessments are split equally among the four tribes. This procedure is currently in arbitration as the smaller tribes believe that it is inequitable.

TESTIMONY ON THE KANSAS LOTTERY

Before the Senate Federal and State Affairs Committee
By: Ed Van Petten, Executive Director - Kansas Lottery

January 12, 2005

Committee Members:

You have been provided with Kansas Lottery folders which contain information regarding the Kansas Lottery and its operations. Included are publications of the Kansas Lottery which are distributed to players and retailers, as well as historical and current information on sales, prizes, commissions and transfers. Please feel free to contact me with any questions you have at any time regarding this information or any other questions you may have about the operation of the Kansas Lottery.

I have prepared additional information herein, to show you a present picture, and let you know the direction that the Kansas Lottery is going.

I. Sales

Sales have shown an increase the last three fiscal years, after decreases in FY00 and FY01. As you may recall, there was some scandal during the year 2000 that created bad publicity and this was rehashed repeatedly during the 2001 legislative session. Public perception of the Lottery during this time period was less favorable than during the previous years. We hope that perception has improved at this time. Sales projections developed for budget preparation for this fiscal year and next, are as follows:

	<u>FY05</u>	<u>FY06</u>
Instant Games	\$87,500,000	\$88,500,000
Keno	39,000,000	39,000,000
Super Kansas Cash	25,000,000	26,500,000
Pick 3	5,500,000	5,500,000
Powerball	54,000,000	55,000,000
2by2	2,500,000	2,500,000
Pull tabs	4,500,000	4,500,000
eScratch	<u>1,200,000</u>	<u>2,000,000</u>
Total projected sales	\$219,200,000	\$223,500,000

Senate Federal & State Affairs
Committee

1-12-05

Attachment 6

Sales for the first half of FY05 are:

Instant Games	\$47,293,310
Keno	18,718,753
Super Kansas Cash	9,576,158
Pick 3	2,543,135
Powerball	24,053,945
2by2	1,387,544
Pull tabs	2,010,305
eScratch	<u>344,903</u>
Total sales	\$105,928,053

Although all reports are generated based on fiscal year results, I have requested calendar year sales for 2004, which are as follows:

Instant Games	\$97,284,607
Keno	38,408,316
Super Kansas Cash	23,954,912
Pick 3	5,175,532
Powerball	47,855,475
2by2	2,861,881
Pull tabs	4,185,154
eScratch	<u>537,176</u>
Total sales	\$220,263,053

We feel that the increases we have experienced with instant ticket sales are a result of changes we have made in game development and marketing practices. We are printing smaller quantities of most of our instant games, but introducing more games to the market each week. This results in higher printing cost per ticket on the games affected, however, most games sell substantially out, which means fewer tickets are destroyed after a game is ended. We have seen a dramatic increase in total sales of our instant games since initiating this practice. Overall printing costs have not increased substantially, as we are printing more tickets of our staple games, such as Crossword and Bingo, and printing more games at a time, which gives us a cost savings from our printer.

We are presently exploring the viability of shipping all instant tickets to the retail location to eliminate the need for 3/4 ton delivery vans and weekly visits to retailers. If this is cost effective, it will be implemented by the first of the fiscal year.

Since we visited last year, we have begun the sale of a game called eScratch, available at all lottery retailers. This is a totally new concept in lottery games, where a player is given a PIN number when a ticket is purchased. The player then logs onto the given web site, escratchks.com and is instructed on playing a number of games on the site. The tickets are predetermined to be winners or nonwinners at the time of purchase, thus not violating the prohibition for gambling on the internet. We have learned a lot since launching this game, and are currently planning a re-launch this spring, to address some

of the concerns brought forward by retailers and players. These changes will simplify the purchase and claim process. Although sales continue to increase, the performance thus far has been somewhat disappointing.

Sales of our lotto games, Powerball and Super Kansas Cash, are down substantially from this time one year ago, for the fiscal year. In fiscal '04, both of those games had two very high jackpots during the first half of the fiscal year, and this year we have not had that experience. The question I am asked most often by people on the streets, other than wanting to know the numbers, is, "Why don't you make many millionaires instead of having those extremely high jackpots?" The fact is however, that many people simply will not buy a Powerball ticket or a Super Kansas Cash ticket until the jackpot is extremely high.

We do advertise our products, mostly by radio advertisements and point of sale materials. Quarterly costs for media advertising usually run about \$300,000. We usually advertise only featured or specialty games, such as the "Cabela's Cash" or "Atlantis" games with some periodic support for the lotto style games on radio and television. We do have extensive advertising also in the form of retail point-of-sale and promotional material. We have increased our support for the lotto games as well as Keno, 2by2 and eScratch.

We were very happy to welcome Casey's stores back to the Lottery during the start of this fiscal year. Although not all stores are selling due to ADA concerns, at this time we have added about 75 Casey's stores to our network.

II. Transfers

The 2002 legislature allowed the Lottery to modify the method of calculating transfers made each month. Rather than the statutory provision of transferring 30% of gross sales each month, the Omnibus bill allowed for minimum monthly transfers of \$4.5 million, and a minimum annual total of \$59 million. This request was made to give us more flexibility in operations and the possibility of increasing prize payouts to bolster sales. As a result of these changes, the lottery has on occasion transferred less than 30% of sales in a given month; however our average transfers have been running closer to 32%. This method was also adopted in 2003 and 2004, although increasing the minimum yearly total.

Our first year operating under the new plan resulted in \$62.5 million transferred. As you can see in your materials, last year we transferred \$70.2 million. By allowing the Lottery more flexibility in operations, we have been able to market higher price point games with higher prize payouts, and shown incremental increases in our sales.

III. Operations

Our primary concern continues to be security, both in our gaming system and field operations. We have eliminated the ability of programmers to access the gaming system unaudited, by adding a test system, detached from the gaming system, for developing new programs. We have also increased the audit functions, or oversight, on the gaming system. We have recently concluded a Security Audit through Legislative Post Audit, which resulted in no major findings and limited recommendations, which we are in the process of either implementing or clarifying with the audit firm.

All divisions are required to reduce the use of paper to the greatest degree possible. Daily and weekly sales reports, which formerly were distributed on paper, are now paperless and maintained "on line" on our internal server. All draw information is also maintained paperless; however some reports and records must be maintained in paper form.

Our gaming system in the field now operates on a wireless communications system statewide. We utilize both satellite and radio technology, and have increased operations with approximately 99.9% up time. When operating on the telecommunications system, uptime ran approximately 98.5%. Total savings per year have run approximately \$1.6 million since implementation.

We are required to survey retailers to ensure compliance with the Americans with Disabilities Act, which is a continuing responsibility. We have enjoyed a good working relationship with Anthony Fadale, State ADA Coordinator, and with the Disability Rights Center of Kansas (DRC), formerly Kansas Advocacy and Protective Services, Inc. (KAPS). We currently conduct the surveys of retailers with staff from the Security Division, with concurrence of results from the Personnel Division. We felt that the prior system of surveys conducted by field sales staff had weaknesses inherent in it. We feel that now our surveys show more consistency.

IV. Partnerships

We continue to develop marketing partnerships with Kansas businesses and industries. As you are aware we market games with Kansas Speedway, the Kansas State Fair, the Country Stampede, the beef industry, the 3i Show, Cabela's and various automobile dealers. We recently launched our second "Cabela's Cash" ticket, which follows the most successful second chance draw ticket in lottery history. Our intent with these games is to increase the exposure of Kansas business and industry and to generate enthusiasm in the Kansas citizens for our games. We will soon launch a game in partnership with a Kansas Manufacturer of nationwide repute.

In June 2004, the Lottery sponsored the ARCA race at the Kansas Speedway. This resulted in the most successful race on the ARCA circuit by far. This relationship, as well as a presence at all other Kansas Speedway events, has proven very successful.

There are a number of businesses in the lottery industry that license certain products for use of logos and using their merchandise for prizes in conjunction with lottery games. These licenses are quite often very expensive, so we have tried to generate the same effect of "brand" or name recognition, and hopefully help a Kansas business in the process. Instead of costing the Lottery extra, the merchandise has been provided at no cost, or reduced cost, with no charges for the use of logos and names. This seems to be a good way to stimulate economic development in Kansas without the use of public funds to do so. In fact, we are generating additional public funding in the process.

V. Veterans Benefit Games

Unaudited sales figures for the Veterans Benefit Games are as follows:

Sunflower Salute	\$ 627,934
Veterans Cash 2	1,088,490
Veterans Cash 3	<u>525,159</u>
Total sales	\$2,241,583

All expenses relating to the game are to be deducted from gross sales to determine the amount transferred. We will transfer \$500,000 in January with the remainder being transferred at the end of the fiscal year. We anticipate a total transfer of approximately \$785,000.

KANSAS LOTTERY
To Date Activity 11/30/04

Net Sales	\$2,626,528,330	Game Prizes	\$1,371,843,465
FY 88	\$65,804,532	FY 88	\$30,123,006
FY 89	68,188,022	FY 89	33,755,427
FY 90	64,530,640	FY 90	28,941,942
FY 91	70,206,003	FY 91	32,800,224
FY 92	77,147,506	FY 92	37,304,320
FY 93	114,499,165	FY 93	58,865,299
FY 94	152,292,802	FY 94	79,390,419
FY 95	177,074,245	FY 95	92,074,812
FY 96	182,113,628	FY 96	96,088,069
FY 97	185,356,681	FY 97	99,351,785
FY 98	192,017,310	FY 98	101,688,863
FY 99	198,920,985	FY 99	107,079,089
FY 2000	192,560,800	FY 2000	104,377,074
FY 2001	184,727,159	FY 2001	97,938,088
FY 2002	190,083,880	FY 2002	98,963,631
FY 2003	202,942,874	FY 2003	107,660,534
FY 2004	224,457,166	FY 2004	120,775,874
FY 2005	83,604,932	FY 2005	44,665,009
Retailer Commissions	\$145,778,203	Transfers To State	\$805,942,406
FY 88	\$3,618,110	FY 88 *	\$11,343,321
FY 89	3,602,985	FY 89	24,500,950
FY 90	3,318,244	FY 90	19,259,917
FY 91	3,657,131	FY 91	19,453,470
FY 92	4,071,319	FY 92	27,147,019
FY 93	5,819,600	FY 93	32,629,372
FY 94	7,845,162	FY 94	47,888,013
FY 95	9,145,434	FY 95	53,246,818
FY 96	9,949,228	FY 96	58,114,547
FY 97	10,409,462	FY 97	56,658,134
FY 98	10,935,736	FY 98	60,304,388
FY 99	11,133,848	FY 99	59,333,464
FY 2000	11,086,788	FY 2000	59,646,911
FY 2001	10,657,155	FY 2001	56,535,258
FY 2002	10,970,973	FY 2002 **	60,494,603
FY 2003	11,743,157	FY 2003	62,500,000
FY 2004	12,926,131	FY 2004 ***	70,217,944
FY 2005	4,887,740	FY 2005 ****	26,668,277

* Includes \$2,843,321 Loan & Interest Payback

** Includes \$4,000,000 payment on July 15, 2002

*** Includes: extra \$835,250 transfer; \$632,694 veteran's transfer; \$2,000,000 aviation program

**** Includes: extra \$668,277 transfer

--- FY 2005 is UNAUDITED ---

6-6

RETAILER COMMISSIONS & BONUSES

Selling Commission:

*5% for all instant, pull tabs & on-line games

Cashing Commissions:

*1% of Instant, Pull Tabs, Powerball, Super Kansas Cash, Pick 3 & 2by2 prizes validated and paid by the retailer from FREE tickets - \$599.

*2% of Keno prizes validated and paid by the retailer up to - \$599.

Selling Bonuses:

*Powerball jackpot bonus = \$10,000

*\$100,000 or greater prizes claimed for Powerball, Super Kansas Cash and Keno = \$1,000 selling bonus

*All jackpot bonuses (Powerball, Super Kansas Cash, & 2by2) are shared equally if there are multiple winners and the bonus is paid on a parimutuel basis.

*1% of the instant, pull tabs, and on-line prizes claimed over \$599 (minimum \$10 and maximum \$100)

*All retailers must be ADA compliant to receive bonuses.

Allowance

*1/4 of one percent of on-line sales for problem tickets paid weekly