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SB 404

Proponent – IN PERSON

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Ruffin Properties LLC

Chairman Robert Olson  
Vice Chair Senator Richard Hilderbrand  
Ranking Minority Member Senator Oletha Faust-Goudeau  
Federal & State Affairs Committee of the Senate

RE: Testimony of R. Scott Beeler Regarding Senate Bill 404

Dear Chairman Olson, Vice Chairman Hilderbrand, Ranking Minority Member Faust-Goudeau and Members of the Committee:

Good Morning. My name is R. Scott Beeler and I am a partner with the law firm Lathrop GPM, LLP. I appear this morning on behalf of my client Ruffin Properties LLC and in support of SB 404.

As a number of members of this committee are well aware, several bills have been introduced over the past years which deal with updates, changes and modifications to existing Kansas statutory authority pertaining to gaming. For those members new to this Committee and issue, the prior bills included provisions which specifically authorize a vote to permit electronic gaming machines at a racetrack gaming facility in Sedgwick County; adjust and equalize tax rates; and address legislative questions and desires for additional clarity with regard to the placement of racetrack gaming facilities within the three geographic zones allowed by current statute. Moreover, the prior bills set forth specific and exclusive remedies for any party desiring to bring a challenge of breach of contract or any other legal basis against the state of Kansas for a refund of prior paid privilege fees and/or interest thereon, should a racetrack gaming facility contract be entered in the geographic area of the challenging party.

SB 404 includes these same provisions from the prior bill. In addition, SB 404 clarifies authorization for parimutuel licensees to operate historical horserace machines at racetrack facilities. Historical horse racing machines are identified as parimutuel wagering under the bill. This legislation mirrors similar legislation in multiple other states across the country. The operation of historical horse racing machines is governed and regulated under the existing Parimutuel Racing Act and not the Kansas Lottery Act. In other words, this addition to the bill does not impact or change KELA.

While similar sounding terms, “racetrack gaming facilities” are parimutuel facilities where lottery games called, electronic gaming machines (“EGMs”) can be operated. “race track facilities” are parimutuel facilities where historic horse racing machines (“HHRs”) can be operated.

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Once again, this bill contains provisions which serve to protect the state of Kansas from claims for repayment of privilege fees and/or accrued interest which claims might be alleged to arise as the result of the Kansas Lottery Commission issuing gaming facility licenses and/or the Racing and Gaming Commission issuing racetrack facility licenses.

As has been the case with prior bill drafts, the drafting goal is to insulate the state from any such claims by requiring the challenging lottery gaming licensee to follow a protocol of filing an original action in the Kansas Supreme Court prior to any racetrack gaming facility or racetrack facility license being issued. Any such suit claim is strictly limited and restricted to a claim for repayment of privilege fees and accrued interest. Such a suit is required under the legislation to be filed within 60 days of a notice of intent for issuance of a contract to a racetrack gaming facility or a racetrack facility.

If the Supreme Court determines that the issuance of such a contract does not constitute a breach of contract between the claiming party and the state or a prohibited expansion of gaming under current gaming laws, then no privilege fee or interest repayment would be due. On the other hand, should the high court determine that some or all of a privilege fee payment and/or accrued interest is due if a contract be issued and signed, then if the racetrack gaming facility owner or racetrack facility owner, as the case may be, wishes to proceed with the issuance of a contract, it must first pay to the state the full amount of the total privilege fee and/or accrued interest as ordered by the Court. Such amount must be paid prior to the issuance of the contract.

I respectfully restate my testimony offered in multiple prior legislative sessions . . . parimutuel facilities operate at a gross cost disadvantage to lottery gaming facilities, i.e., casinos. It is undisputed that live racing costs are prohibitive in today's environment. Further, there is significant opposition to live greyhound racing in this state and in many states across the country. Still, there are literally millions of horse and dog racing fans across this country. Many studies have documented that it is an entirely different and definable gaming customer who chooses to play casino games as opposed to those that go to racinos or other racetrack gaming operations to wager on simulcasting or historical horse racing machines. In other words, there is an entirely separate and additional revenue stream opportunity which is available to the state of Kansas in the form of racetrack gaming facility and/or racetrack facility operations.

Please recall that the original gaming legislation in Kansas specifically permitted four lottery gaming facilities (casinos), one each in the defined northeast, southeast, south central and southwest zones and three racetrack gaming facilities, one each in all but the southwest zone. This bill does not expand this restriction on gaming sites, it merely facilitates legislative intent to have both a lottery gaming and parimutuel facility in each identified geographic region. In order to make those operations financially viable for developers and operators, percentage adjustments must be made to the electronic gaming machine tax at racing gaming facilities. That tax must be adjusted to equate with the same tax being paid for the same machine which would be located at a casino in this state. This bill, like prior versions, makes that adjustment.

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In addition, this bill seeks to clarify that historical horse race machines are a form of parimutuel gaming and that such machines are allowed at racetrack facilities in Kansas. Historical horse racing machines (HHRs) are not electronic gaming machines (EGMs). Simply stated, EGMs are based upon chance. HHRs are based upon the handicapping prowess of the bettor. HHRs are not based upon chance but rather on the historical actual outcome of races previously run at tracks across the country. The bettor is unaware of what race or what horses or at what track or on what date. Instead, the bettor can receive the same race form information (sans names) that was available to the actual bettors on the date of the actual race. From there, the bettor predicts the outcome of the race.

The Kansas Constitution establishes the rate of “take out” which is to be paid to the state. That rate is already established at three percent (3%) for parimutuel racing activities. The same three percent (3%) rate is adopted in SB 404.

It is important to recognize that SB 404 is a revenue generating bill. It is crafted and intended to generate an additional income stream for the state of Kansas. The bill would be more streamlined but for prior threats of existing lottery gaming facility license holders to sue the state of Kansas for exorbitant and unsupported damage claims should the state (and its commissions) issue racetrack gaming or racetrack facility licenses. We reiterate that the feigned threats of damage claims against the state made by lottery gaming facilities are unsupported under the law. That said, we understand legislative concerns about such threats and the bill addresses them. Once again, this bill contains protective provisions to ensure that any damage claim is limited to contractual claims for privilege fee and/or accrued interest repayment and is further limited to a challenge from the lottery gaming license holder in the geographic location where the racetrack gaming facility or racetrack facility is to be located. Lastly, it requires the racetrack gaming facility or racetrack facility owner to front any privilege fee or accrued interest payment amount determined by the Kansas Supreme Court. These provisions are intended to protect the state of Kansas from exposure.

This revenue generating bill should be passed. I am happy to stand for any questions you may have.

Respectfully submitted,



R. Scott Beeler