

SUBJECT: Granting the Texas Lottery Commission subpoena powers to regulate bingo

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 5 ayes — Wilson, Yarbrough, Goolsby, Haggerty, A. Reyna

0 nays

4 absent — Flores, D. Jones, J. Moreno, Wise

WITNESSES: For — None

Against — Stephen Fenoglio, various Texas charities; *Registered but did not testify*: Steve Bresnan, Bingo Interest Group; Bill Pewitt, Texas Charitable Bingo Association; Janice Woods, Bingo Is Good for Nonprofit Organizations

On — *Registered but did not testify*: Billy Atkins, Texas Lottery Commission

BACKGROUND: The Texas Lottery Commission regulates bingo operations under the Bingo Enabling Act (Occupations Code, chapter 2001). The commission licenses bingo operators, commercial lessors, manufacturers and distributors of bingo equipment, and automated bingo system service providers. The commission can ask a commercial lessor to disclose supplemental financial information; examine the books and records of a manufacturer's or distributor's license holder or applicant; and inspect the services of a system service provider after receiving a complaint. The commission may deny a license application or revoke a license if an applicant or licensee fails to submit requested supplemental information. However, the commission has no authority to issue a subpoena to compel a witness to testify or to compel the production of evidence as part of an enforcement action.

DIGEST: HB 2578 would authorize the Lottery Commission, in investigating any matter under the Bingo Enabling Act, to issue a subpoena to compel a witness to testify or to compel evidence to be produced at the commission's

office in Austin or another designated place. The subpoena would have to be served personally or by certified mail.

The commission could issue a subpoena requiring the immediate production of evidence only if necessary due to exigent and extraordinary circumstances and if the subpoena was signed and issued by a member and an agent of the commission.

The commission would have to adopt rules to avoid imposing an undue burden or expense on people issued subpoenas. The commission could delegate its subpoena authority to one of its agents. The fee charged for serving a commission subpoena could not exceed the fee for serving similar subpoenas.

To enforce compliance, the commission could file suit against a person who failed to comply with a subpoena. On finding good cause for the subpoena, a court would have to order the person to comply with the subpoena and pay attorney's fees. The court could punish the person for contempt. A person who was required by a subpoena to attend a proceeding would be entitled to reimbursement for mileage traveled and a fee for each day the person was required to be present.

A person in possession of evidence located outside Texas could request that the evidence be examined where it was located. The commission could designate a representative to examine the evidence. On request of an another state or of a U.S. official, the commission could examine evidence located in Texas for that official.

Evidence acquired by a commission subpoena would not be a public record for as long as the commission determined was necessary to complete an investigation, to protect the person being investigated from unwarranted injury, or to serve the public interest. The evidence would not be subject to a subpoena, other than a grand jury subpoena, until the commission released the evidence for public inspection or a district court determined that no harm to the public interest would arise from complying with the subpoena. Except for good cause, a district court order would not apply to interagency communications or to the commission's internal communication.

Privileged or confidential information or evidence produced under a subpoena would remain privileged and confidential until admitted into evidence. The commission could issue a protective order to restrict the use or distribution of the information or evidence.

On request, the commission could furnish evidence obtained under a subpoena to a law enforcement agency or a prosecuting attorney. A subpoena issued to a financial institution as part of a criminal investigation would not be subject to provisions regarding the production of financial institution records. The bill's provisions would not affect the conduct of a contested case under the Administrative Procedure Act.

The bill would take effect October 1, 2001.

**SUPPORTERS
SAY:**

Because it regulates a very cash-intensive industry, the Lottery Commission needs the authority to issue subpoenas. Currently, the commission's power extends only to those whom it licenses. If the commission requests access to records from its licensees, the licensees may comply voluntarily. If the licensee does not comply, the commission can take administrative action but still may not be able to gain access to the records. Occasions arise when the commission needs to subpoena records to ensure that bingo operations are being conducted properly and legally.

The commission is charged with enforcing the provisions of the Bingo Enabling Act and ensuring compliance. The lack of subpoena power limits the commission's ability to enforce the law.

Subpoenas are common and useful regulatory tools for agencies that regulate cash-intensive businesses. About 38 agencies, ranging from the Racing Commission to the Cosmetology Commission, now have subpoena power. The Lottery Commission should be granted the same authority as those other agencies enjoy.

**OPPONENTS
SAY:**

HB 2578 would give the Lottery Commission new authority that exceeds its needs. The fact that other agencies have subpoena authority is not reason enough to grant such authority to the Lottery Commission. The commission already has the authority to request records. It has functioned well without

subpoena authority, and no occasion has arisen in which such authority would have to have been used.

The bill could allow the commission to overstep its boundaries by gaining access to an organization's information and records, such as its general account, that are not related to the bingo operation and that the commission does not have authority to regulate.

The provisions of HB 2578 are biased in favor of the commission. The bill would provide that if a person failed to comply with a subpoena and a court found good cause to issue the subpoena, the person would have to pay reasonable attorney's fees of the commission. However, the bill would not provide that the commission would have to pay the person's attorney's fees if the court did not find good cause to issue the subpoena.

The reimbursement for complying with a subpoena would not be adequate compensation for the inconvenience of attending a proceeding that a person had been subpoenaed to attend. The bill would not address compensation for a witness not subpoenaed but necessary to the subpoenaed person's defense.

HB 2578 could cause some private information to become public. Evidence obtained by the commission under subpoena from third parties could be confidential information. The information would not be a public record while the investigation was being conducted. However, once the investigation was completed, the information would become a public record. The bill would not safeguard personal information, such as bank account numbers and social security numbers, from becoming public record.