

**SUBJECT:** Requiring bingo operators to disburse net proceeds and other revisions

**COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended

**VOTE:** 8 ayes — Flores, Geren, Goolsby, Hamilton, Homer, D. Jones, Morrison, Quintanilla

0 nays

1 absent — Chisum

**WITNESSES:** For — Steve Bresnen, Bingo Interest Group

Against — None

On — Billy Atkins, Texas Lottery Commission, Charitable Bingo Division

**BACKGROUND:** Since 1981, state-licensed nonprofit organizations in Texas have been allowed to conduct bingo games if voters in the local political subdivision approve the games in an election. Proceeds must be spent on charitable purposes, although conductors of the games may deduct certain expenses before distributing money for charitable purposes. In about 200 counties, bingo has been approved by one or more local jurisdictions. In 2004, charitable bingo generated about \$603 million in total gross receipts, of which about \$29.8 million was spent for charitable purposes.

The Lottery Commission, through its bingo division, regulates bingo and licenses the nonprofit organizations (called conductors), lessors of bingo halls, manufacturers and distributors of bingo supplies, and providers of automated bingo system services. The Lottery Commission regulates prizes, accounting methods, and other details of the games. In 2004 they commissioned about 1,419 charitable organizations to conduct bingo games.

Occupations Code, sec. 2001.101, establishes the types of organizations that can be licensed to conduct bingo. They include religious societies that have existed in Texas for at least eight years; certain nonprofit

organizations that support medical research and treatment programs; nonprofit fraternal organizations; nonprofit veterans organizations; and volunteer fire departments. Nonprofit organizations must have tax-exempt status under the U.S. Internal Revenue Code, sec. 501(c).

Bingo operators must make charitable distributions of a minimum of bingo funds each quarter. Charities must distribute at least 35 percent of adjusted gross receipts, less deductions for statutorily authorized expenses, not to exceed 6 percent of the gross receipts. These expenses can include bingo supplies, prizes, advertising, security, repairs, rent, mortgages or insurance expenses, bookkeeping, legal, or accounting services, payroll for certain positions, and license fees.

Net proceeds, as related to gross receipts, is defined in sec. 2001.002(18) as the amount remaining after deducting the reasonable sums necessarily and actually expended for expenses authorized under the statute and for prize fees.

A 5 percent tax is imposed on prizes, of which counties and cities can choose to receive a portion. In 2004, \$21.3 million was collected in prize fees, of which about half went to local jurisdictions and about half to the state. In addition, a 3 percent gross rental tax is imposed on rental income received by people who lease premises for conducting bingo games.

In 2003 the Legislature allowed charities at the same location to operate with joint bingo accounts, inventories, and personnel. This is called unit accounting.

**DIGEST:**

CSHB 1138 would change the formula for determining how much money bingo operators would have to disburse for charitable purposes, revise charities accounting methods, and require a biennial report to the governor and Legislature about a bingo fund.

The bill would make various other changes, including reducing the amount of bond that the commission could require to secure the payment of taxes and fees, allowing workers to be employed on a provisional basis while awaiting the results of background checks, restricting who could request advisory opinions from the commission, and changing some license requirements.

**Accounting methods and amount distributed for charitable purposes.**

CSHB 1138 would change the disbursement formula used to determine how much money bingo operators would have to disburse for charitable endeavors. Instead of requiring that organizations distribute at least 35 percent of their adjusted gross receipts, less certain deductions, the bill would require that they disburse all of their net proceeds, other than an amount of operating capital limited by statute. Bingo operations would have to result in net proceeds during the organizations' license period, unless the organization had a two-year license, in which case it would have to have net proceeds over each 12-month period.

Licensed organizations and unit members could keep limited operating capital in their bingo accounts. The amount could equal their actual average expenses per quarter, based on the preceding four quarters, excluding prizes paid, up to \$50,000 per organization or per member of a unit. The commission would adopt rules permitting organizations to keep operating capital in excess of these restrictions if the organizations met certain criteria.

Organizations could request waivers of the requirement that they disburse a minimum amount of funds for charitable purposes and of the limit on the operating capital that they could retain. The commission could grant a waiver upon a showing of good cause by an organization that the disbursement requirements or operating capital restrictions were detrimental to their existing or planned charitable purposes. Good cause could be shown with credible evidence of circumstances beyond the organization's control or with a credible business plan for the conduct of bingo or the organization's existing or planned charitable purposes.

The Texas Lottery Commission would have to adopt rules about the organization's handling of money and operating capital by April 1, 2006.

CSHB 1138 would set deadlines, from one to three years after the bill's effective date, for organizations to distribute money in their bingo accounts that was in excess of the authorized maximum operating capital. The Lottery Commission could waive these requirements upon a showing of good cause.

CSHB 1138 would allow organizations to transfer money from their general funds or other accounts to their bingo accounts or to the bingo account of a unit member if the balance in the account to which funds

were being transferred was less than the maximum permitted by law and if the organization notified the commission within 10 working days of the transfer. Organizations now must receive approval before transfers of funds. Except as provided above, organizations could not transfer receipts from the conduct of bingo to another account. CSHB 1138 would no longer authorize organizations to have bingo savings accounts.

**Commission report.** CSHB 1138 would require the commission to report to the governor and legislative leadership on or before June 1 of each even-numbered year on the total amount of adjusted gross receipts reported by an organization from their bingo operations and on the percentage that the net proceeds bear to the adjusted gross receipts earned from bingo operations.

Adjusted gross receipts would mean the receipts remaining after prizes were paid, excluding prize fees collected from bingo players. When determining total net proceeds, the commission would take into account situations in which rent was paid by organizations to other organizations that pay rent to commercial lessors.

**Bond to secure payment of taxes and fees.** CSHB 1138 would change the limit on the amount of a bond the commission could require organizations to put up to secure the payment of taxes or fees. The commission now can require a bond of up to three times the amount of taxes and fees due, according to a license holder's average quarterly reports. CSHB 1138 would set the limit at the amount due.

**Provisional employment of workers not in registry.** The bill would allow organizations to employ persons not on the registry of approved bingo workers as operators, managers, cashiers, ushers, callers, or salespeople on a provisional basis for up to 14 days if they were awaiting results of background checks by the commission. Those removed from the registry for reasons listed in the Bingo Act and not placed back on the list by the commission could not be employed under the provisional conditions.

**Advisory opinions.** The bill would limit who could seek advisory opinions from the commission to officers, primary operators or business representatives of license holders, or to attorneys, accountants, or bookkeepers retained by license holders. The commission could refuse to issue advisory opinions about matters under active litigation.

**Licenses.** The bill would extend the prohibition against issuing bingo licenses if officers of organizations had been convicted of certain crimes within the last 10 years to include directors of organizations.

CSHB 1138 would eliminate requirements that bingo licenses include the specific purpose to which net proceeds would be devoted and a statement of whether a prize was offered and the amount of the prize. The bill would require that an application for a license to conduct bingo include the names and addresses of directors and would eliminate the requirement that it include certain information about each person who would work at the bingo occasions.

CSHB 1138 would allow issuing and renewing of commercial lessor licenses to certain types of entities, including foreign entities, non-Texas residents; and certain types of corporations.

**Other provisions.** CSHB 1138 would make other changes to the statutes governing charitable bingo, including:

- allowing organizations to remit the 5 percent prize fee on prizes of less than \$5 without having to collect the amount from the winner;
- removing the term "instant bingo" from the definition of pull-tab bingo and defining instant bingo as a form of bingo using combinations of numbers, letters or symbols, some of which have been designated in advance as prize winners and using a finite number of winners contained within a predetermined set of chances to win. The term "instant bingo" would include pull-tab bingo, event tickets, sign-up boards, tip boards, coin boards, and instant tickets; and
- eliminating a requirement that certain reports that are submitted quarterly by organizations to the commission and comptroller be sent to the comptroller.

CSHB 1138 would repeal several provisions, including

- requirements that local authorities be sent copies of license applications and requirements that pull tab bingo tickets show representation of a bingo game;
- a \$1 maximum price for bingo pull tab tickets; and
- requirements that the commission make available to the comptroller reports of bingo organizations' expenses.

The bill would take effect October 1, 2005.

SUPPORTERS  
SAY:

CSHB 1138 would help ensure that bingo organizations produced net proceeds and that an adequate portion of those proceeds were distributed for charitable purposes. It also would improve the handling of money by the organizations and require that the governor and the Legislature receive accurate information about the distribution of operators for charitable purposes. Other changes would ease some unnecessary burdens on operators and the commission and would update current law to remove obsolete language or to reflect current practices.

**Accounting methods and amount distributed for charitable purposes.**

CSHB 1138 would require a less complicate formula for organizations to calculate what must be distributed for charitable endeavors and one that ensured that the maximum amount of money was being disbursed for charitable purposes. The requirement that organizations disburse 35 percent of gross receipts, less expenses, is complicated and can be misleading about the amount going to charitable purposes. It also can lead organizations not to distribute as much as they could or should for charitable purposes.

CSHB 1138 would solve these problems by allowing organizations to have a reasonable amount of money for operating capital and then requiring that the rest — their net proceeds — go for charitable purposes. By requiring that organizations have some net proceeds, CSHB 1138 would ensure that no organization could continue if it was not giving at least something for charitable purposes.

CSHB 1138 would allow organizations to continue to save for big-ticket items by allowing for waivers of the general limits on what they could retain and by ensuring that charities were credited as disbursing funds for a charitable purpose if the money had essentially been encumbered but not yet been spent. If a volunteer fire department wanted to save money for a new truck, it could ask the commission for the requirements in CSHB 1138 to be waived.

CSHB 1138 would make organizations' accounting methods more business-like and more easily examined and audited. It would reduce the number of accounts that organizations could keep and make transfers of money easier while retaining state oversight. For example, organizations could transfer money without commission approval from a general fund to

a bingo account, as long as the balance of the bingo account remained under the statutory or commission-set limit. However, the organizations would have to notify the commission of the transfer.

**Commission report.** The commission currently is not required to report to the Legislature directly about bingo activities. CSHB 1138 would require a biennial report to the governor and legislative leadership to ensure that they adequately could monitor bingo in Texas and that they had adequate information to make decisions about proposed legislation. The report would include specific calculations based on net proceeds so that an accurate picture of the amount of money being disbursed for charitable purposes could be drawn.

**Bond to secure payment of taxes and fees.** The current limit on bonds the commission can require is burdensome on organizations and higher than necessary to cover adequately the state's exposure to nonpayment of taxes and fees. Posting a bond equal to three times the organization's liability can be prohibitively expensive for the charities. Capping the bond at the organization's tax and fee liability would ensure that the state could recover the money owed to it if necessary while maximizing the money that charities could keep and disburse for their charitable purposes.

**Provisional employment of workers not in registry.** CSHB 1138 reasonably would accommodate current law so that organizations could hire workers quickly when they were unable to find them on the registry to fill openings. Currently, all bingo employees must be part of the registry, but in some areas a high turnover of bingo employees can lead to a situation in which no workers who are on a registry are available to fill openings. CSHB 1138 would allow workers to be employed on a provisional basis for up to 14 days so that games could keep operating while these workers applied and were placed on the registry.

**Advisory opinions.** Limiting who could request advisory opinions from the commission would reduce the number of requests from individuals not responsible for the day-to-day operations of bingo, some of whom have made numerous, repetitive requests not designed for the purpose of the opinions. The advisory opinion process was created so that people in the bingo industry could request information about an interpretation or compliance with laws and rules. Limiting advisory opinions would be similar to the limits on who can ask the attorney general for an opinion.

**Licenses.** Requiring that directors undergo the same background checks conducted on officers of organizations would help ensure that only qualified persons were directors of organizations. Requirements that have been found unconstitutional, such as prohibiting certain types of entities from getting licenses, would be eliminated, as would obsolete or unnecessary requirements.

OPPONENTS  
SAY:

**Accounting methods and amount distributed for charitable purposes.** Under CSHB 1138, the formula and requirements for disbursing funds could harm some charities' ability to manage their funds and to save those funds for legal, charitable purposes. For example, some charities could want to save funds in excess of what they have to distribute under current law for new buildings or other capital expenditures. They could be forced to disburse some of those funds if they were not granted a waiver from the limits in the bill. Charities complying with all requirements to maintain their tax exempt status and disbursing the amount currently required should not have to seek commission approval of how they manage their money.

Requiring all charities to have net proceeds within a 12-month period could be unfair to new charities that may have significant start-up costs. Operators should not be held to a standard of turning a profit annually when other businesses and industries have no such requirements.

**Bond to secure payment of taxes and fees.** The limit on the bond that the commission could request to secure an organization's payment of taxes and fees should not be reduced because the bond might not be enough to cover an organization's liability in some situations. For example, if the commission were trying to suspend a license and the procedure became lengthy, an organization's liability might be more than the amount allowed under CSHB 1138.

**Provisional employment of workers not in registry.** Allowing organizations to hire workers on a provisional basis without being on the registry of bingo workers would violate one of the purposes of the registry, which is to help ensure that persons involved in certain aspects of bingo have undergone adequate background checks. It currently takes the commission no more than about 72 hours to approve applications for workers to be put on the registry, so the 14-day provisional period is unnecessary.



NOTES:

The committee substitute made several changes to the original bill, including adding the definition of instant bingo, changing the components of the commissions biennial report, adding the prohibition on directors of organizations convicted of certain crimes, requiring organizations with two-year licenses to have net proceeds for each 12-month period, eliminating the requirement that the comptroller receive certain reports, and adding provisions changing the maximum amount of bond that the commission can require to secure taxes and fees. HB 1138 as introduced would have eliminated the prize fee on pull tab prizes of \$5 or less. The committee substitute would retain the prize fee on all prizes but allow organizations to forego collecting the fee on prizes less than \$5 as long as they remit the fee themselves.