

SUBJECT: Continuing the Texas Lottery Commission

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Miles
0 nays
2 absent — Price, S. Thompson

WITNESSES: For — Philip Sanderson, Texas Charity Advocates; (*Registered, but did not testify*: Doug DuBois, Jr., Texas Food & Fuel Association)

Against — Rob Kohler, Christian Life Commission Texas Baptists, David Smith; Juanita Wallace; (*Registered, but did not testify*: Brent Connett, Texas Conservative Coalition)

On — Gary Grief and Sandra Joseph, Texas Lottery Commission; (*Registered, but did not testify*: Stephen Fenoglio, River City Bingo Charities, K&B Sales, Inc. dba Goodtime Action Games, State AmVets Department of Texas and its member posts; Amy Trost, Sunset Advisory Commission)

BACKGROUND: In 1991 Texas voters approved a constitutional amendment authorizing a state lottery, and in 1993 the 73rd Legislature created the Texas Lottery Commission. The commission oversees the state lottery and charitable bingo.

The commission has three public members who are appointed by the governor with the advice and consent of the Senate for six-year, staggered terms. One commission member must have bingo industry experience.

The commission licenses lottery retailers, markets lottery games, conducts lottery drawings, and awards lottery winnings. It also manages contracts for lottery operations, advertising, and instant ticket production.

The Lottery Commission has about 309 employees, with almost 90 percent of them working on lottery operations and services and the rest on

charitable bingo, which the commission regulates under Occupations Code, ch. 2001. Since 1981, state licensed nonprofit organizations in Texas have been allowed to conduct bingo games following voter approval in local elections.

Through its bingo division, the commission licenses the nonprofit organizations that conduct bingo games, lessors of bingo halls, manufacturers and distributors of bingo supplies, and others. The commission regulates prizes, accounting methods, and other details of the games and collects bingo taxes and prize fees. About 1,140 organizations currently are authorized to conduct bingo games, and there are about 400 commercial lessors who lease bingo locations to the charities.

In fiscal 2011, the commission received \$214 million, including \$199 million from the general revenue dedicated lottery account for lottery operations and \$14.9 million in general revenue for bingo regulation. Of the general revenue appropriation, about \$12.5 million was in bingo prize fees, which are passed through to local governments and the rest was used for bingo administration.

DIGEST:

CSHB 2197 would continue the Lottery Commission until September 1, 2025. The bill would increase the size of the commission, require the commission to approve certain contracts, and require the commission to produce a comprehensive business plan. It would also make changes to the laws governing charitable bingo relating to bingo licensing and registration fees, inspections and auditing, and licensing practices.

The bill would apply or update standard Sunset provisions dealing with public membership, conflicts of interest, board member training, grounds for removal from the commission, separation of duties of policy making and management, negotiated rulemaking and alternative dispute resolution policy, public participation, and complaints.

CSHB 2197 would take effect September 1, 2013, and the commission would be required to adopt rules, policies, and procedures required by the bill by January 1, 2014.

Commission size. CSHB 2197 would increase the size of the lottery commission from three to five members. Members would hold staggered, six-year terms. The governor would be required to appoint two additional commission members as soon as practicable after the bill's effective date.

Commission approval of major contracts. The bill would require the commission to review and approve all major procurements. The commission would have to establish procedures to determine what would be considered a major procurement, based on the value of the contract and other factors. The commission could give the agency executive director the authority to approve non-major procurements.

Comprehensive business plan. CSHB 2197 would require the commission to develop a comprehensive business plan. The plan would have to include agency goals and an evaluation of specific items such as agency performance and the effectiveness of programs and initiatives. The plan would be adopted by September 1, 2014, and would be discussed annually at a public meeting following review by the commission.

Other lottery provisions. CSHB 2197 would require that hearings on the denial, suspension, and revocations of sales agent licenses be conducted by the State Office of Administrative Hearings (SOAH).

The bill would eliminate a requirement that the commission produce a report on each lottery game showing tickets sold and prizes awarded.

Bingo fees. CSHB 2197 would remove statutory fees for manufacturers and distributors licenses and instead require the commission to set the fees in amounts reasonable to defray administrative costs. The commission would be authorized to set the fee for amending a license, rather than the current \$10 statutory fee.

The bill would authorize the commission to set a fee for applications for bingo worker registry.

Authorization would remain for bingo licensees to pay for a two-year license, but the option of paying in two installments would be eliminated. The bill also would remove a requirement that bingo manufacturers and distributors pay a \$1,000 fee in addition to their renewal fee to obtain a two-year license.

Bingo inspections and audits. CSHB 2197 would require the commission to prioritize bingo inspections based on risk factors, including the amount of money derived from bingo, the compliance history of the premises, and the time since the last inspection.

The commission also would be required to use risk analysis to identify which licensees would be at risk of violating the law or commission rules and to develop a plan to audit those licensees.

Bingo licensing practices. CSHB 2197 would make several changes to the laws governing the commission's bingo licensing practices. The commission would be required to adopt rules for the bingo license renewal process.

The commission would be required to adopt rules governing its current authority to temporarily suspend a bingo license. It would be authorized to place on probation persons whose license or registration were suspended and to take certain actions when probating a license or registration, including limiting a licensee's activities or requiring regular reporting to the commission. The bill would allow the commission to consider financial loss to the state as a criterion when considering temporarily suspending a bingo license.

The bill would require SOAH to conduct hearings on the denial, revocation, and suspension of bingo licenses and hearings related to administrative penalties.

CSHB 2197 would require the commission to comply with Occupations Code, ch. 53 requirements that cover the handling of criminal convictions in licensing. The provisions would have to be used when issuing or renewing a bingo license and listing workers on the bingo workers registry. The bill would remove requirements that bingo licenses be denied to persons convicted of crimes of moral turpitude, defined by the Bingo Act, if it were within the 10 years of the termination of a sentence or the end of probation or parole for the offense.

The bill would require the commission by rule to adopt a schedule of sanctions for violations of the Bingo Act and to ensure that the sanctions were appropriate to the violation.

**SUPPORTERS
SAY:**

The Lottery Commission should be continued because it has been successful in accomplishing its mission of generating revenue for the state, with more than \$13.6 billion going to Foundation School Fund, \$5.3 billion to the general revenue fund, \$160 million to teaching hospitals that support indigent health care, and \$16 million to the Texas Veterans

Commission.

The Lottery Commission is the best entity to continue to operate the state lottery and to oversee charitable bingo. The commission has the expertise and organizational structure to continue these tasks efficiently. Moving these duties to other entities would be inefficient and not result in significant cost savings to the state.

The lottery is a voluntary source of entertainment with broad appeal, which is illustrated by a 2012 study showing that lottery players do not have lower incomes than non-players. Texans have weighed concerns about the lottery relating to social welfare and other issues, and many have chosen to show their support for the game and the state funds it raises by continuing to play.

Expanding commission size. The size of the commission should be expanded because its operation of the lottery and regulation of charitable bingo is hampered by having only three members. The commission's small size makes it difficult to use subcommittees to divide its workload and to develop expertise. In addition, in the absence of one commissioner, the other two cannot informally discuss the work of the agency without potentially violating the state's Open Meetings Act.

Expanding the commission to five members would allow it to work more effectively and efficiently. One spot would continue to be reserved for a bingo representative, and others would remain unrestricted so that the commission could have a broad base of expertise. A larger commission would be in line with most other state agency governing boards and lottery oversight bodies in other states.

Commission approval of major contracts. CSHB 2197 would increase the accountability of the lottery commission by requiring it to approve major contracts. Currently, contracting authority rests solely with the executive director, thereby reducing the commission's responsibility in this critical area that includes some of the largest businesses decisions in state government. Giving procurement oversight to the commission would allow commissioners to confirm that the contracting process was sound and would make the agency's practices consistent with those of other state agencies.

Comprehensive business plan. By requiring the commission to formally

implement a business plan — something it has been doing informally — CSHB 1297 would ensure that the agency had an ongoing, statutory requirement to evaluate its performance, operations, and efficiency. The agency would benefit from a business plan that includes consistent analysis, reporting, and goal setting. The bill would ensure agency accountability to the public by requiring that at least annually the commission held a public meeting to discuss the plan.

Other lottery provisions. Requiring that certain hearings be conducted by SOAH would put in statute the current practice of the commission and ensure that the commission's procedures continued to conform with commonly applied licensing practices.

The bill would abolish one of the commission's nine required reports because gathering the information it provides on ticket sales and prizes is impractical and is provided to the public by the commission in other more useful and accessible ways.

The current 5 percent minimum commission paid to retailers who sell lottery tickets is consistent with other states. In addition to the 5 percent sales commission, retailers can take part in sales agent incentives established by the Lottery Commission.

Bingo fees. Currently, the licensing fees charged by the commission are inflexibly set in the statutes, resulting in fees that do not cover the cost of regulation. In addition, the commission cannot charge fees for some of its regulation. CSHB 2197 would address this issue by removing the statutory fees and allowing the commission to set fees to cover the cost of regulation. In addition, the bill would authorize a new fee to cover the commission's cost of adding workers to the registry. These changes would be consistent with authority given to other regulatory agencies and would help provide the commission with the necessary resources to regulate bingo.

Fees would be set through the commission's rule process that would include numerous opportunities for input from the public and the bingo industry. Legislative oversight would ensure that fees remained reasonable.

Bingo inspections and audits. CSHB 2197 would increase the effectiveness and efficiency of the commission's bingo inspections and

audits by requiring them to be based on risk analysis. Currently, the commission does not have a targeted approach to inspections and audits, which means that scarce resources may not be used where they are most needed. The bill would address this problem by requiring the commission to develop and use risk analysis for inspections and audits.

Bingo licensing practices. Changes in CSHB 2197 would improve the efficiency of bingo regulation, give the agency more flexibility, and conform the commission to commonly applied licensing practices. For example, the bill would require the commission to create a standard renewal process and authorize the commission to place suspended licensees on probation.

Other changes would conform the commission's licensing practices to model licensing standards identified by the Sunset commission staff, including requiring hearings to be held by SOAH and requiring the commission to develop complaint procedures. Although the commission currently uses SOAH for its bingo hearings, CSHB 2197 would ensure these functions remained independent and fair.

The bill would require the commission to use the standards in the Occupations Code, ch. 53 when examining criminal convictions during bingo licensing or registration. This would ensure that the commission made appropriate decisions about granting and denying licenses according to state guidelines to evaluate offenses as they relate to the responsibilities of a licensee.

The term "crimes of moral turpitude," which currently is used in the Bingo Act to preclude the issuance of licenses, could be interpreted too broadly, even with the definitions in the statute. For example, the statutory definition includes all felonies, something that might be inappropriate as it relates to a bingo license. Current provisions prohibiting license for persons convicted of gambling or criminal fraud would remain.

**OPPONENTS
SAY:**

Texas should abolish the Lottery Commission to end the state's involvement in running and promoting gambling. The lottery is a predatory gambling business that results in a regressive tax often paid by the poorest and least educated. The state funds that the lottery has raised do not outweigh its negative impact on social welfare or that fact that it has failed to provide a real increase in education funding. State revenue for public schools can be raised in other ways, such as increasing taxes on

alcohol.

Commission size. If the commission is to be expanded, it might be best to have at least some slots designated for commissioners with certain types of expertise. For example, members could be required to have extensive lottery playing experience, represent low-income persons, or represent lottery retailers. Other state oversight boards often have specific requirements for membership.

Bingo fees. CSHB 2197 could result in increased fees on those involved with charitable bingo. The bill would remove the fixed, statutory license fees, which could allow the commission to increase fees to an inappropriate or burdensome level. For example, according to the fiscal note, the fee to amend a license is projected to increase from the current \$10 to \$25. In addition, the bill would authorize a new fee, estimated in the fiscal note to be \$25, for initial bingo worker registration. Organizations involved in charitable bingo are often small, local groups that should not be subject to high licensing fees. Higher licensing fees could translate to less money for charitable purposes.

Bingo licensing practices. CSHB 2197 should not remove the current language prohibiting persons who have been convicted of crimes of moral turpitude from being licensed or involved with bingo. The Bingo Act defines crimes of moral turpitude so that it is clear in the statute what crimes would prohibit a license, including any felony. It is best to keep this structure rather than allow the commission to work under the Occupations Code to make decisions about crimes that preclude licenses. Bingo activities can involve large amounts of cash, and removing this established prohibition on crimes of moral turpitude could establish a dangerous framework for licensing.

OTHER
OPPONENTS
SAY:

Other lottery provisions. CSHB 2197 should include an increase in the current 5 percent statutory commission that lottery retailers receive for selling tickets. This would help retailers better cover the cost of selling the tickets, which generate state revenue.

NOTES:

The committee substitute differs from the original bill only in the language proposed for the caption, which refers to changing fees as well as imposing them.

The companion bill, SB 210 by Huffman, has been referred to the Senate

State Affairs Committee.

According to the fiscal note, CSHB 2197 would result in an annual increase to the state in fee revenue of \$145,027.