

SUBJECT: Moving bingo licensing, regulation from Lottery Commission to TDLR

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 9 ayes — Smith, Gutierrez, Geren, Goldman, Guillen, Kuempel, Miles, D. Miller, S. Thompson

0 nays

WITNESSES: For — Steve Bresnen, Bingo Interest Group; Stephen Fenoglio, Texas Charity Advocates; (*Registered, but did not testify:* Lee Woods, Amusement and Music Operators of Texas; Glenn Deshields, Texas Charity Advocates)

Against — Rob Kohler, Christian Life Commission Baptist General Convention of Texas

On — Brian Francis, Texas Department of Licensing and Regulation; (*Registered, but did not testify:* Alfonso Royal III, Texas Lottery-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 for charitable purposes, although conductors of the games may deduct certain expenses.

Occupations Code, ch. 2001 is the Bingo Enabling Act. The Texas Lottery Commission, through its bingo division, regulates charitable bingo in Texas. The agency monitors bingo operations and licenses those involved in bingo, including nonprofit organizations, individuals, entities that conduct games, lessors of bingo halls, and manufacturers and distributors of bingo supplies. The commission is required to generate revenue from the industry to cover costs related to bingo.

Occupations Code, sec. 2001.502 requires organizations conducting bingo

to collect a 5 percent fee on bingo prizes of more than \$5. The fee is shared among the state and some cities and counties. Occupations Code, sec. 2001.501 imposes a tax on the rental of premises where bingo is conducted. The rate is 3 percent of the gross amount collected in rent.

In 2013, the 83rd Legislature enacted HB 2123 by Guillen and HB 1127 by Smith, which allowed Willacy County and Harris County, respectively, to regulate the operation of game rooms. These bills created two versions of Local Government Code, ch. 234, subch. E — one for each county.

Under both versions of Subchapter E, the applicable county is authorized to regulate the operation of game rooms in a variety of ways, such as restricting their locations, prohibiting game rooms within a certain distance of schools, places of worship, or neighborhoods, or restricting the number of game rooms allowed in the county.

Subchapter E defines a “game room” as a for-profit business located in a building or place that contains six or more amusement redemption machines. “Amusement redemption machine” means certain machines made for amusement purposes that exclusively reward players with noncash prizes that have a value of no more than 10 times the amount charged to play the game once or \$5, whichever is less.

DIGEST: CSHB 2642 would move the licensing and regulation of charitable bingo from the Texas Lottery Commission to the Texas Department of Licensing and Regulation (TDLR) and the Texas Commission on Licensing and Regulation.

The bill would make numerous other changes, including establishing a formula for determining net proceeds, revising the distribution of the bingo prize fee, repealing the tax on rental premises, and revising local authority to regulate game rooms.

Transferring bingo regulation to TDLR. The bill would transfer the functions, activities and appropriations relating to bingo from the Lottery Commission to TDLR on September 1, 2015. The bill would remove

Occupations Code, ch. 2001, the bingo act, from being subject to the Sunset Act, currently required in Government Code provisions applying the Sunset Act to the Lottery Commission.

Net minimum proceeds. The bill would establish a required minimum net proceeds that organizations would have to meet. This would determine how much money would have to be devoted to charitable purposes. The bill would rename the current “gross receipts” to be “gross gaming revenue,” which would be the total amount received by sales, rentals, entrance fees and other income less the amount of cash prizes paid to winners of bingo games

The required minimum net proceeds that would have to be met would be determined by the combined gross gaming revenue of the licensed organizations located at a single premise. If the combined gross gaming revenue exceeded \$500,000 annually, the combined net proceeds of the organizations could not be less than 10 percent of the combined gross gaming revenue of those organizations. If the combined gross gaming revenue was \$500,000 or less annually, the combined net proceeds of the organizations could not be less than 5 percent of the combined gross gaming revenue of those organizations. These requirements would be phased in over three years with lesser amounts required for the first two years.

Organizations located at premises subject to the minimum requirement for organizations with \$500,000 or less would be exempt from the 5 percent requirement if they did not conduct more than two bingo occasions in any week. TDLR could by rule impose minimum net proceeds requirements on these organizations.

The required minimum net proceeds amounts would be adjusted for bingo premises that on January 1, 2015, were located within 75 miles of a casino with electronic gaming. The adjustment would allow organizations to use the lesser of the standard net proceed requirements established by the bill or an amount multiplied by the number of organizations at the premises.

TDLR would have authority to waive or reduce the net proceed requirements under certain circumstances.

Bingo prize fee, bingo rental tax. The bill would revise the distribution and handling of the current 5 percent fee collected by organizations on cash prizes of more than \$5. The amount would no longer be referred to as a prize fee, but instead would be called a prize tax. The tax would not be applied to merchandise prizes.

The organizations would collect the prize tax and would no longer remit it to the state regulatory authority. The organizations would distribute it to cities and counties authorized to receive it. Cities and counties currently authorized to receive a portion of the tax could continue to do so if they vote by November 1, 2015, to impose the tax. The amount left after distribution to the cities and counties would go into the organization's general charitable fund.

The changes made by the bill would apply to prize taxes collected on or after January 1, 2016.

The bill also would repeal the tax on the rental of premises where bingo is conducted.

Other provisions related to bingo oversight. The bill would make several other changes and would repeal numerous other provisions, many of which would be made to conform the law to the transfer of responsibilities from the Lottery Commission to TDLR.

The bill would include changes to the licensing regulations. TDLR would be authorized to set fees for licenses based on an organization's total receipts. The number of license classes for organizations, which is based on receipts, would be reduced from 10 to four and the amounts that define each category would be revised. Two-year licenses would be eliminated. The bill also would reduce commercial lessor licenses classes from 10 to four and would revise the amounts that define those licenses.

The bill would state that nothing in the legislation shall be construed as authorizing any game using a video lottery machine or machine. Those terms would be defined as any electronic video game that, on the insertion of case, is available to play or simulate the play of a video game, including, but not limited to video poker, keno, and blackjack, using a video display and microprocessor in which the player can receive free games or credits that can be redeemed for cash, coins, or tokens or that directly dispenses cash, coins, or tokens. This bill would place this language in the Occupations Code by adding Section 2001.409, and would repeal the same language from Section 10, Chapter 1057, enacted by the 74th Legislature.

The bill also would include the penalty for the current offense related to the sale of bingo equipment or supplies without a license state. First offenses would be state-jail felonies (180 days to two years in a state jail and an optional fine of up to \$10,000) and subsequent offenses third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000).

Other provisions in the bill include:

- revising the bingo advisory committee to require it to include representation from distributors and manufactures;
- authorizing district courts in Travis County, rather than the county for which a commercial license was issued, to handle certain issues related to bingo licenses;
- defining the department's authority to take disciplinary action against organizations with criminal history background checks on file for certain individuals associated with the organization;
- defining the value of a merchandise bingo prize for the purpose of calculating prizes limit; and
- allowing TDLR to adopt rules that would affect the percentage of total receipts paid as prizes in certain bingo markets.

Local authority to regulate game rooms. The bill would repeal Local Government Code, ch. 234, subch. E as added by HB 2123 in 2013, which

applied to counties with a population of less than 25,000 that were adjacent to the Gulf of Mexico and within 50 miles of an international border (Willacy County).

The bill also would repeal Local Government Code, sec. 234.132 as added by HB 1127 in 2013, which applied the subchapter to counties with a population of 4 million or more (Harris County). It would leave in place the other provisions of Subchapter E as added by HB 1127 authorizing counties to regulate game rooms.

The bill would apply regulations adopted by commissioners courts for game rooms to locations at which bingo was conducted. The regulations would apply in the same manner as they did to game rooms. Certain restrictions would be prohibited from applying to locations where bingo was conducted lawfully on or before January 1, 2015.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

Transferring bingo regulation to TDLR. The bill would move bingo oversight from the Lottery Commission to TDLR, an agency with extensive experience in licensing and enforcement duties. TDLR is an efficient and effective regulator, and overseeing bingo would fit well with its core mission. In contrast, the Lottery Commission's core mission is to regulate the lottery and raise money for public schools, which can distract from its focus on bingo. The move would result in increased efficiencies in the licensing process, which in turn could result in more money being used for charitable purposes.

Many provisions in the bill would streamline the administrative process by allowing TDLR to overlay its regulatory systems and procedures rather than have such details in the statute.

Net minimum proceeds. The bill would revise the way organizations direct money for charitable purposes for better transparency and to ensure that all organizations contributed an adequate amount of funds to charitable purposes. The bill would require organizations to subtract

prizes from gross gaming revenue to determine a minimum amount that would have to be distributed for charitable purposes

The bill would address concerns that some organizations may not be distributing as much as they could or should for charitable purposes by establishing a three-tier system to determine a minimum required revenue distribution. The bill would recognize that some small organizations might not be able to meet these requirements but still contribute to charitable endeavors by exempting them from the requirements and allowing TDLR to establish requirement for small organizations offering very limited bingo. The bill also would include an adjustment for organizations within 75 miles of casinos to recognize that they may have more competition for patrons than other organizations.

While this reform may contribute to some charitable organizations having to cease running charitable bingo games, it would be a necessary change to put the entire industry on better footing and ensure that games were run to fund charitable purposes.

Bingo prize fee, bingo rental tax. The bill would revise the handling and distribution of the bingo prize fee to make it more efficient, transparent, and to return more money for charitable purposes. The bill would rename the bingo prize fee as the “bingo prize tax” so that it was more accurately identified.

Instead of the state keeping a portion of the tax, one-half of it would go directly to the organization’s general fund where it could be used only for charitable purposes. This would maximize proceeds to the charities and allow the tax to function more as a mandatory player contribution to charitable purposes. Cities and counties currently receiving a portion of the tax would not be harmed because they could continue to receive the tax if they voted to do so.

Eliminating the state portion of the bingo prize tax and eliminating the bingo rental tax on rental income would be more in line with the goals of the bingo act, which was never intended to be a source of state revenue.

Because the cost of regulating bingo is recovered through fees and other costs, the state should not continue to collect these taxes.

Local authority to regulate game rooms. The bill would remove provisions that limit to certain counties the authority to regulate game rooms, giving all counties in the state the ability to regulate game rooms. It is difficult for law enforcement to build individual cases against illegal gambling operations that take place in game rooms. A better way to deal with illegal gambling would be to allow each county to regulate game rooms in a way that worked for each individual county. Since some game rooms are located in bingo facilities, the bill would extend this local authority to these as well. However, the authority would be limited for existing facilities to ensure unfair regulations relating to location and signage were not imposed on places already operating.

OPPONENTS
SAY:

Transferring bingo regulation to TDLR. The Lottery Commission is the most appropriate agency to administer and regulate charitable bingo. It has the knowledge and organizational structure to oversee bingo with its enforcement, legal, and administrative services. Bingo enforcement regulation is complex, and the Lottery Commission has the expertise needed to oversee it properly. TDLR may not have any experience with some tasks involved in overseeing bingo, such as certain types of financial auditing.

The Sunset Advisory Commission considered the question of which state agency should oversee bingo prior to the 2013 session and concluded that regulation of bingo was generally well placed at the Lottery Commission. Moving regulation from one agency to another would not result in administrative savings, according to the Sunset report.

Keeping bingo regulation and oversight with the Lottery Commission is needed to keep the focus on bingo as a form of gambling. Moving bingo oversight to TDLR could result in it being lost among the approximately 120 other license types handled by the agency. Bingo should continue to be held to the scrutiny called for as a form of gambling, something best done by the Lottery Commission.

Net minimum proceeds. The three-tier system that the bill would institute for requiring a portion of net proceeds to be distributed for charitable purposes could result in some organizations currently operating charitable bingo to have to cease running games. This could hurt the charitable activities that these organizations support.

Bingo prize fee, bingo rental tax. The redistribution of the bingo prize fee from the state and the repeal of the bingo rental tax would reduce state revenue that could be considered as a source of funding to help implement the bill if needed. Although, revenue for regulating the industry is generated from the industry, if the bill resulted in the need for additional revenue for regulations or to transfer duties to a new agency, the fee and tax could be considered as a source of funding to help keep fees on the industry from increasing.

Local authority to regulate game rooms. The bill's provisions about game rooms would not help to eradicate illegal gambling activities in some areas of Texas. Some local governments and law enforcement allow illegal game rooms to stay open because they generate revenue. The bill would not help to end this misuse of power because it would allow counties to decide what regulations to put into place.

OTHER
OPPONENTS
SAY:

TDLR could need an increase in resources to take over the regulation and licensing of charitable bingo, especially for initial costs for technology. The current system used to collect, process, and license those involved with bingo is different from systems used by TDLR and currently is able to piggyback off of some of the Lottery Commission's systems. Establishing such a system at TDLR could be costly.

Either state agency overseeing bingo could need additional resources to implement some of the new regulations and authority that would be established by the bill. For example, basing required minimum net proceeds calculations by location, instead of organization, and the authorization to the regulating entity to adopt certain rules based on bingo markets would be new functions.

NOTES: CSHB 2642 would result in a decrease of \$58.8 million in general revenue related funds through fiscal 2016-17, according to the fiscal note. This loss would come from the state no longer receiving the bingo prize fee, a change in the structure of license fees, the elimination of the bingo worker registration fee, and the repeal of the bingo rental tax.