

BILL ANALYSIS

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DIGEST AND PURPOSE

In 1991, Texas voters approved a constitutional amendment authorizing a state lottery. In 1993, the Texas Legislature created the Texas Lottery Commission (lottery commission) to assume the administration of the lottery and also transferred the administration of the Bingo Enabling Act to the new agency. Today, the lottery commission administers and markets the state lottery and regulates the charitable bingo industry through licensing and enforcement. As proposed, S.B. 270 continues the Texas Lottery Commission for the standard 12-year period until September 1, 2015.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Lottery Commission SECTION 3 (Section 466.1005, Government Code), SECTION 5 (Section 466.158, Government Code), SECTION 13 (Section 467.112, Government Code), SECTION 14 (Section 2001.0555, Occupations Code), SECTION 19 (Section 2001.3015, Occupations Code), SECTION 20 (Section 2001.351, Occupations Code), SECTION 21 (Section 2001.355, Occupations Code), SECTION 23 (Section 2001.451, Occupations Code), SECTION 25 (Section 2001.458, Occupations Code), and SECTION 26 (Section 2001.6015, Occupations Code).

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 466.014, Government Code, by adding Subsection (d) to require a contract between the division and a lottery operator under Subsection (b) to contain a provision allowing the contract to be terminated without penalty if the division is abolished.

SECTION 2. Amends SubchapterB, Chapter 466, Government Code, by adding Section 466.026, as follows:

Sec. 466.026. COMPREHENSIVE BUSINESS PLAN. (a) Requires the Texas Lottery Commission (lottery commission) to develop a comprehensive business plan to guide its major initiatives. Requires the plan to include certain information.

(b) Requires lottery to at least annually review the comprehensive business plan to assess the overall performance and value of each program and project.

SECTION 3. Amends Subchapter C, Chapter 466, Government Code, by adding Section 466.1005, as follows:

Sec. 466.1005. PROCUREMENTS. (a) Authorizes the lottery commission to purchase or lease facilities, goods, and services and to make any purchases, leases, or contracts, necessary for carrying out the purpose of this chapter.

(b) Requires the lottery commission to review and to approve all major procurements as provided by lottery rule. Requires lottery by rule to establish a procedure to determine what constitutes a major procurement based on the cumulative value of a contract and other relevant factors.

(c) Authorizes the lottery commission to delegate to the executive director the

authority to approve procurements other than major procurements.

SECTION 4. Amends Sections 466.101(a) and (b), Government Code, to add new language to existing text to add the lottery commission to certain actions and decisions which are currently the sole responsibility of the executive director.

SECTION 5. Amends Section 466.158, Government Code, by adding Subsections (d)-(f), as follows:

(d) Requires the lottery commission, in making a determination whether to renew a license, to consider the compliance history of a license holder. Requires the lottery commission to adopt rules to govern the specific areas of compliance history that may be considered in the renewal determination.

(e) Authorizes the lottery commission, after an opportunity for a hearing, to deny an application for renewal of a license if the applicant's compliance history reveals conduct that is inconsistent with this chapter or the commission's rules adopted under this chapter in the specific areas considered in accordance with the rules adopted under Subsection (d).

(f) Authorizes the lottery commission by rule to adopt a system under which licenses expire on various dates during the year. Requires the lottery commission, for the year in which the license expiration date is changed, to prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. Provides that on renewal of the license on the new expiration date, the total license renewal fee is payable.

SECTION 6. Amends Section 467.002, Government Code, to continue the Texas Lottery Commission for the standard 12-year period until September 1, 2015.

SECTION 7. Amends Sections 467.021(a) and (b), Government Code, as follows:

(a) Provides that the lottery commission is composed of five, rather than three, members.

(b) Requires appointments to the lottery commission be made without regard to certain factors.

SECTION 8. Amends Section 467.022, Government Code, to make a conforming change.

SECTION 9. Amends Section 467.024, Government Code, by adding Subsections (c) and (d) as follows:

(c) Provides that a person may not be a lottery employee employed "in a bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if certain criteria are met.

(d) Provides that a person may not act as the general counsel to the lottery if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the lottery.

SECTION 10. Amends Subchapter B, Chapter 467, Government Code, by adding Section 467.0255, as follows:

Sec. 467.0255. TRAINING. (a) Provides that a person who is appointed to and qualifies for office as a member of the lottery commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the lottery commission until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with certain information.

(c) Provides that a person appointed to the lottery commission is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 11. Amends Sections 467.026(a) and (c), Government Code, to provide the grounds for removal of a commission member.

(c) Requires the executive director, if he or she has knowledge that a potential ground for removal exists, to notify the presiding officer of the lottery commission of the potential ground. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the lottery commission, who is required to then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 12. Amends Subchapter B, Chapter 467, Government Code, by adding Sections 467.037-467.040, as follows:

Sec. 467.037. **DIVISION OF RESPONSIBILITIES.** Requires the lottery commission to develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the executive director and the staff of the lottery commission.

Sec. 467.038. **EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.** (a) Requires the executive director or the executive director's designee to prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) Requires the policy to include certain information.

(c) Requires the policy statement to be updated annually, be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1), and be filed with the governor's office.

Sec. 467.039. **REQUIREMENTS AND STANDARDS OF CONDUCT INFORMATION.** Requires the executive director or the executive director's designee to provide to members of the lottery commission and to lottery employees information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 467.040. **STATE EMPLOYEE INCENTIVE PROGRAM INFORMATION.** Requires the executive director or the executive director's designee to provide to lottery employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 13. Amends Subchapter Chapter 467, Government Code, by adding Sections 467.109-467.112, as follows:

Sec. 467.109. **TECHNOLOGY POLICY.** Requires the lottery commission to develop and implement a policy requiring the executive director and lottery employees to research and propose appropriate technological solutions to improve the ability to perform lottery functions. Requires the technological solutions to ensure that certain services are provided.

Sec. 467.110. **NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION.** (a) Requires the lottery commission to develop and implement a policy to encourage the use of certain rulemaking and alternative dispute resolution procedures.

(b) Requires the lottery commission's procedures relating to alternative dispute resolution to conform to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the lottery commission to designate a trained person to perform certain functions.

Sec. 467.111. PUBLIC PARTICIPATION. Requires the lottery commission to develop and implement policies that provide the public with a reasonable opportunity to appear before lottery and to speak on any issue under the jurisdiction of the commission.

Sec. 467.112. COMPLAINTS. (a) Requires the lottery commission to maintain a file on each written complaint filed with the commission. Requires the file to include certain information.

(b) Requires the lottery commission to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) Requires the lottery commission, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(d) Requires the lottery commission to publish procedures covering the entire complaint process from submission to disposition.

(e) Requires the lottery commission by rule to require an investigation related to a complaint to be completed within a reasonable time.

(f) Requires the lottery commission to analyze the complaints filed with the board to identify any trends or issues related to certain violations.

SECTION 14. Amends Subchapter B, Chapter 2001, Occupations Code, by adding Section 2001.0555, as follows:

Sec. 2001.0555. COMPLIANCE MONITORING. Requires the lottery commission to adopt rules to govern its monitoring of a license holder to determine if the license holder is in compliance with this chapter or rules adopted under this chapter. Requires the rules at a minimum to address audits and inspections and other compliance and enforcement activities.

SECTION 15. Amends Section 2001.057, Occupations Code, by adding Subsections (h) and (i), as follows:

(h) Requires the Bingo Advisory Committee (committee) to annually develop a work plan detailing the committee's objectives and the issues to be addressed by the committee during the year. Requires the plan to perform certain tasks.

(i) Requires the committee to perform a review at the end of each year to perform certain functions.

SECTION 16. Amends Section 2001.101, Occupations Code, to authorize the lottery commission to license an authorized organization to conduct bingo if the organization has been in existence for the time required by commission rule. Deletes provisions requiring various organizations to have been in existence varying lengths of time.

SECTION 17. Amends Section 2001.103(d), Occupations Code, to provide that an organization

operating under a temporary license is subject to the standard licensing oversight of the lottery commission, including audits and inspections.

SECTION 18. Amends Section 2001.152, Occupations Code, to authorize the lottery commission to issue a commercial lessor license to certain individuals. Deletes current language related to eligibility for a commercial lessor license.

SECTION 19. Amends Subchapter G, Chapter 2001, Occupations Code, by adding Section 2001.3015, as follows:

Sec. 2001.3015. LICENSING RULES. Requires the lottery commission by rule to perform certain tasks.

SECTION 20. Amends Section 2001.351, Occupations Code, as follows:

(b) Requires the lottery commission, in making a determination whether to renew a license, to consider the compliance history of a license holder. Requires the lottery commission to adopt rules to govern the specific areas of compliance history that may be considered in the renewal determination.

(c) Authorizes the lottery commission, after an opportunity for a hearing, to deny an application for renewal of a license if the applicant's compliance history reveals conduct that is inconsistent with this chapter or the commission's rules adopted under this chapter in the specific areas in accordance with the rules adopted under Subsection (b).

SECTION 21. Amends Section 2001.355, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Adds new language to existing text regarding the temporary suspension of a license.

(d) Requires the lottery to adopt rules to govern the temporary suspension of a license under this section.

SECTION 22. Amends Section 2001.406(a), Occupations Code, to delete current language from existing text related to the rent charged by a licensed commercial lessor.

SECTION 23. Amends Section 2001.451, Occupations Code, by adding Subsections (g) and (h), as follows:

(g) Requires the lottery commission to adopt rules to allow a licensed authorized organization to retain a maximum percentage of the organization's gross receipts as operating capital in the organization's bingo account. Provides that the gross receipts retained may not exceed an amount established by lottery rule.

(h) Requires the lottery by rule to require a licensed authorized organization to maintain a positive cash flow in the organization's bingo account. Requires the lottery to sanction an organization that fails to comply with the rule.

SECTION 24. Amends Sections 2001.457(a), (b), and (d), Occupations Code, as follows:

(a) Requires a licensed authorized organization, before the end of each quarter, to disburse for charitable purposes all of the organization's adjusted gross receipts from the preceding quarter, except for the amount that may be retained as provided by Section 2001.451(g).

(b) Requires the lottery commission to sanction a licensed authorized organization that fails to make the disbursement required by Subsection (a) or to make any disbursement for charitable purposes for a quarter. Makes conforming changes.

(d) Redefines "adjusted gross receipts." Deletes the definition of "cost of goods purchased

by an organization.”

SECTION 25. Amends Section 2001.458, Occupations Code, by adding Subsection (c), to require the lottery commission, in accordance with this section and Section 2001.459, by rule to define a licensed authorized organization’s reasonable and necessary expenses under this chapter.

SECTION 26. Amends Subchapter Chapter 2001, Occupations Code, by adding Section 2001.6015, as follows:

Sec. 2001.6015. ADMINISTRATIVE PENALTY SCHEDULE; TIMELINE. (a) Requires the lottery commission by rule to adopt an administrative penalty schedule to define and summarize violations of this chapter or commission rules adopted under this chapter to ensure the amounts of penalties imposed are appropriate to the violation.

(b) Requires the administrative penalties to allow certain deviations and provide certain information.

(c) Requires the lottery commission by rule to establish a timeline for the resolution of a violation of this chapter or commission rules adopted under this chapter. Requires the rules to meet certain requirements.

SECTION 27. Repealer: Section 466.003, Government Code (Application of Sunset Act), and Section 2001.057 (b), Occupations Code (Bingo Advisory Committee).

SECTION 28. (a) Requires the Texas Lottery Commission, not later than January 1, 2004, to adopt rules and procedures prescribed in this Act.

(b) Requires the Texas Lottery Commission, not later than January 1, 2004, to adopt a comprehensive business plan, rules and an administrative penalty schedule and timeline.

SECTION 29. (a) Makes application of the changes in law made by this Act in the prohibitions or qualifications applying to a member of the Texas Lottery Commission, prospective.

(b) Requires the governor, promptly after this Act takes effect, to appoint two additional members to the Texas Lottery Commission. Requires the governor, in appointing those members, to appoint one person to a term expiring February 1, 2007, and one to a term expiring February 1, 2009.

(c)-(e) Make application of this Act prospective.

(f) Provides that the change in law made by this Act to Section 2001.457, Occupations Code, applies to the charitable disbursements made by a licensed authorized organization beginning with disbursements for the second quarter of 2004. Provides that a charitable disbursement made by a licensed authorized organization for a quarter before the second quarter of 2004 is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 30. Effective date: September 1, 2003.