

Approved: 3-4-93
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The joint meeting of the Senate Judiciary and Federal and State Affairs Committees was called to order by Chairperson Jerry Moran at 10:05 a.m. on February 16, 1993 in Room 313-S of the Capitol.

All members were present except: All present.

Committee staff present: Michael Heim, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Mary Galligan, Legislative Research Department
Gordon Self, Revisor of Statutes
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Attorney General Robert Stephan

Others attending: See attached list

Sub HB 2023--Procedures for negotiating and entering Indian gaming compacts.

Chairman Moran announced that the focus of this hearing would be on the mechanism by which the Legislature would participate in approving compacts with Indian nations concerning gambling.

Attorney General Robert Stephan appeared to update the Committee on the status of the court hearing regarding the lawsuits by the Potowatomie Tribe and the Kickapoo Nation in which it is alleged the State has acted in bad faith. General Stephan emphasized that the Indian Gaming Regulatory Act was passed for states to give them some authority in gambling operations on Indian reservations, such as oversight, enforcement, audit and appropriate protections against possible illegal action. He advised that as a result of the recent court appearance on the case, it was deemed to be best to limit the scope of today's hearing to briefings on the issue. General Stephan re-emphasized his opinion that once the state has Class III gaming, as Kansas has, then the Indians are also entitled to Class III gaming and any limitations would be the result of negotiations with the tribes. He stated that if the state loses the court case and no agreement can be reached on a compact, the last best offer is accepted by the authorities (the Department of Interior and the Administration in Washington, D.C.) noting that Indian reservations are quasi-sovereign nations with rights granted by the Congress of the United States.

In response to a question, General Stephan opined that ownership of purchased land by the Indians does not automatically give rise to the right for casino gambling on the site. That decision would be made by the Department of Interior. He further advised that there is a mechanism whereby purchased land put in trust can be deeded to the Secretary of Interior and the Secretary would make the ultimate decision as to whether or not it is appropriate that it be utilized for casino gambling. Senator Oleen asked if any tribes currently have land in trust on which they are requesting casinos before the Secretary of Interior. General Stephan stated not to his knowledge.

Chairman Moran greeted Governor Finney who was in attendance at the hearing and then called on Mary Galligan, Legislative Research Department, for a review of the provisions in Sub. HB 2023. Staff provided a memorandum comparing the major provisions of Sub. HB 2023 to HB 2023 as introduced by the LCC (Attachment 1). The Chairman asked how negotiations close in the event of a stalemate and staff advised that the bill does not address that eventuality. In response to a question, staff clarified that under this bill in ratifying a compact, the Governor and the chairperson of the Gaming Compacts Commission would be authorized co-signers on behalf of the state in every case.

The meeting was adjourned at 11:00 a.m. The next meeting is scheduled for February 17, 1993.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-16-73

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
PAT HUBBELL	Topeka	WGP.
DAVE SCHNEIDER	TOPEKA	: KFLAIB
ALAN COBB	TOPEKA	Prairie Band of Potawatomi
Robert D. Page	Prior Lake, MN	PRAIRIE BAND of Potawatomi
ROBERT K. Scott	RED WINE, MN	TRAVIS BAND of Potawatomi
Ralph Tecumseh	MAYETTA, Ks	Prairie Band of Potawatomi
Bill McCormick	Topeka	Governor's office
Arthur W. Wiersma	Mayetta, Ks	Prairie Band Potawatomi
ROBERT L. PIRTLE	SEATTLE, WASH.	POTAWATOMI TRIBE
Mary Ellen Conlee	Topeka	Potawatomi Tribe
TONI WHEELER	TOPEKA	SEN. KARR'S STAFF
Patrick J. Hurley	Topeka	McGee & Assoc
Derrieth L. Sutton	Topeka	Kansas Lottery
Doug Smith	Topeka	Wyandotte Nation
David M. Cullough	Okla. C.L.	Wyandotte Nation
Jan Lusk	Wyandotte Pk	Wyandotte Tribe
Nancy Kinding	Topeka	LWD of Ks
MARK A. BURSHART	TOPEKA	REVENUE
Gary Reser	Topeka	Governor
Ralph Decker	Topeka	Kansas Lottery
Carl Anderson	Topeka	Kansas Lottery
JOHN O. WALKER	TOPEKA	KS. LOTTERY

COMPARISON OF 1993 H.B. 2023 AND SUB. H.B. 2023 – MAJOR PROVISIONS

<u>Issue</u>	<u>H.B. 2023 as Introduced by LCC</u>	<u>Sub. H.B. 2023 as Amended by House Committee of the Whole</u>
Scope	Establishes procedure for negotiating, executing and, implementing state responsibilities under tribal-state gambling compacts pursuant to the federal Indian Gaming Regulatory Act (IGRA).	Same
Party responsible for negotiation	Governor (Sec. 2(a))	Eleven-member Gaming Compacts Commission composed of one appointee of the Governor, five senators and five representatives balanced by party. Terms of legislative members would coincide with terms of House members. The chair would alternate between the House and the Senate. In the event that the Governor, President, and the Speaker are all from the same political party, the vice-chairperson would be designated by mutual agreement of the minority leaders of the House and Senate. (Sec. 2) A subcommittee composed of the chairperson, vice-chairperson, and the Governor's representative would conduct negotiations on behalf of the Commission. (Sec. 3(b))
Approval of Compacts	Ten-member Joint Committee on Gaming Compacts. The Committee would be authorized to approve or recommend modifications or reject any compact it receives from the Governor. (Sec. 3)	The full Commission would be authorized to accept or recommend modifications to compacts presented to it by the subcommittee. (Sec. 3(d))
Execution of Compacts	Upon approval of a compact by the Committee, the Governor would be authorized to enter into the compact on behalf of the state. (Sec. 2(a))	The Governor and the chairperson of the Commission would be authorized to sign on behalf of the state any compacts accepted by the Commission. (Sec. 3(e))
Alternative process	If the Governor would fail to initiate negotiations or fail to resume negotiations to incorporate modifications recommended by the Joint Committee, the Joint Committee would negotiate. In that instance the Speaker and the President would be jointly authorized to enter into the compact on behalf of the state. (Sec. 2(b))	None

Attachment 1
2-16-93
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<u>Issue</u>	<u>H.B. 2023 as Introduced by LCC</u>	<u>Sub. H.B. 2023 as Amended by House Committee of the Whole</u>
Legal counsel	The Attorney General would be counsel for the negotiators. (Sec. 2(c))	The Attorney General would serve as legal counsel for the Commission and the negotiating subcommittee. (Sec. 3(f))
Support staff	The LCC would provide for professional services as requested by the Joint Committee. (Sec. 3(g))	Staff of the Division of Legislative Administrative Services, the Revisor of Statutes, and the Legislative Research Department would provide assistance to the Commission as requested. (Sec. 2(g))
Required compact provisions	Any compact would have to contain a provision recognizing the right of each party to the compact to request that the compact be renegotiated or replaced by a new compact and providing terms under which renegotiation could be requested. Compacts also would have to include a provision that in the event of a request for renegotiation or replacement, the compact remains in effect until renegotiated or replaced. (Sec. 2(d))	Same provisions as in the bill as introduced, plus: <ul style="list-style-type: none"> • an enumeration of games that may be conducted under the compact; • provisions that address security matters and the ability for state law enforcement to monitor and enforce security; • state-tribal dispute resolution; • delineation of tribal-state enforcement responsibilities; • a prohibition against hiring or contracting with felons or persons convicted of gambling offenses; • a requirement that the state be reimbursed for its enforcement and administration expenses; • an outline of tribal enforcement and security duties and responsibilities; • a requirement that gaming facilities conform with building, fire, and safety codes; and • a provision that the tribe will withhold income taxes from or report winnings of non-Indians to the Department of Revenue. (Sec. 4(a))

1-2

<u>Issue</u>	<u>H.B. 2023 as Introduced by LCC</u>	<u>Sub. H.B. 2023 as Amended by House Committee of the Whole</u>
Provisions that must be considered	The Joint Committee would be required to establish and transmit to the Governor guidelines reflecting the public policies and state interests that gaming compacts must address. (Sec. 3(b))	<p>The Commission would be required to consider including in the compact:</p> <ul style="list-style-type: none">• a provision that clearly articulates the procedure that will be used by the tribal gaming agency, in consultation with the Director of Indian Gaming, for determining game rules;• provisions that address the display of game rules and odds of winning in each gaming facility; and• a restatement of standards and requirements for obtaining a license from or contracting with the tribe to operate, manage or conduct gaming operations under the compact. Those standards and requirements for obtaining a license from or contracting with the tribe to operate, manage, or conduct gaming operations under a compact would be determined by the state Director of Indian Gaming in consultation with the Indian nations. Those standards and requirements would have to be the same for all compacts. (Sec. 4(b))
Public hearings	The Joint Committee would be required to hold public hearings on proposed gaming compacts submitted by the Governor. (Sec. 3(b))	<ul style="list-style-type: none">• The Commission would be authorized, but not required, to conduct public hearings. Any hearings would have to be conducted within 30 days of receipt of a request to negotiate or, in the case of compacts signed by the Governor prior to the effective date of the act, within 30 days of the effective date of the act. Those hearings would be to consider the public interest, public safety, criminality, financial integrity and adverse economic impacts on existing gambling activities and the costs to communities and to the state. (Sec. 3(c))

Issue	H.B. 2023 as Introduced by LCC	Sub. H.B. 2023 as Amended by House Committee of the Whole
Negotiation and approval procedure	<ul style="list-style-type: none"> • The Governor or the Governor's designees negotiate. • When the negotiation is complete, the draft compact is submitted to the Joint Committee for approval, rejection, or recommendation of modifications. • If modifications are recommended, negotiations resume and the modified compact is resubmitted to the Joint Committee. • If the compact is rejected, a new compact is negotiated. • If the compact is approved, the Governor enters into the compact on behalf of the state. (sec. 2(a)) 	<ul style="list-style-type: none"> • Requests from Indian nations to negotiate tribal-state gambling compacts would have to be submitted in writing to the Governor who would be required to forward those requests to the Commission within seven days. • The Commission may hold public hearings (see above). • The negotiation subcommittee would submit to the full Commission a draft of a compact upon completion of initial negotiation. The Commission would have 45 days during which to review and either approve or recommend modifications to the compact. Failure of the Commission to approve or recommend modifications to a compact within the 45 day period would constitute approval of the compact. • If the Commission recommends modifications to a compact, the subcommittee is required to reenter negotiations to incorporate those recommendations. When two of the three members of the subcommittee agree that the recommended modifications have been incorporated into the compact to the extent possible, negotiations will be deemed to be complete. • Once negotiations are complete, the Governor and the Chairperson of the Commission would be authorized to execute the compact on behalf of the state. The compact would take effect once executed by both the state and the tribe. (Sec. 3)
Approval of existing compacts	Same as for new compacts, above.	<p>The procedure would be slightly different in the case of those compacts signed by the Governor prior to the effective date of the act.</p> <ul style="list-style-type: none"> • The Governor would be required to submit those compacts to the Commission for consideration within five days of the effective date of the act. (Sec. 3(d))

14

Issue	H.B. 2023 as Introduced by LCC	Sub. H.B. 2023 as Amended by House Committee of the Whole
Reporting	The Governor or the Governor's designee and the Attorney General would be required to report to the Joint Committee regarding gaming compacts negotiated and prospective negotiations. (Sec. 2(e))	<ul style="list-style-type: none"> • If the Commission holds hearings on those compacts, at least one hearing would have to be held on the reservation of the tribe that is party to the compact and all hearings would have to be completed within 30 days of the effective date of the act. (Sec. 3(c)) • The Commission would have 45 days following the hearing period during which to consider those compacts for approval or modification. If the Commission does not hold hearings on those compacts, the 45 day review period would begin when they are submitted by the Governor. (Sec. 3(d)) <p>Other aspects of the procedure for existing compacts would be the same as for newly negotiated compacts.</p>
Additional legislation	The Joint Committee would be authorized to introduce legislation. (Sec. 3(h))	The Commission would be authorized to recommend to the Legislature any legislation necessary to conduct the Commissions duties. (Sec. 2(h))
Implementation of compact	The bill would establish a Division of Indian Gaming in the Department of Revenue that would be responsible for implementing state responsibilities under any tribal-state compacts. The Director of Indian Gaming would be appointed by the Secretary of Revenue, subject to Senate confirmation. The Secretary of Revenue would be authorized to issue rules and regulations to implement the Director's duties under the act. (Sec. 4)	Same (Sec. 5)

<u>Issue</u>	<u>H.B. 2023 as Introduced by LCC</u>	<u>Sub. H.B. 2023 as Amended by House Committee of the Whole</u>
Annual audit of gambling operation	Among other duties, the Director of Indian Gaming would be required to conduct an annual financial audit of each gaming operation and provide a copy of each audit to the KBI. (Sec. 4(b))	The Director would have to conduct an audit unless the Director determines that the federally required audit is sufficient to protect the state's interest. Any audit conducted by the Director would have to be submitted to the KBI. (Sec. 5(b))
Background investigations	<p>The Director would be required to submit fingerprints to the KBI and the FBI and obtain criminal history information about:</p> <ul style="list-style-type: none">• individuals having an ownership interest of 3 percent or more in a gaming operation or in an entity managing a gaming operation under a federally approved management contract;• officers, managers or directors of gaming operations;• management and supervisory employee of the gaming operation or of the manager of a gaming operation; and• any other individuals as provided by a compact. (Sec. 4(c)) <p>The Director of Indian Gaming would be able to receive from criminal justice agencies criminal history record information (including arrest and nonconviction data, and upon written request, information relating to juvenile proceedings), criminal intelligence information and information relating to criminal and background investigations as provided by compacts. Disclosure of that information for purposes other than certification would be a class A misdemeanor and constitute grounds for removal from office, termination of employment, or denial, revocation, or suspension of any license issued under the act. Exceptions to the general prohibition against disclosure of background information</p>	<p>The Director would be required to submit fingerprints to the KBI and the FBI and obtain criminal history information as part of certification of persons as eligible to hold particular positions in a tribal gaming operation. Individuals who would have to be certified include:</p> <ul style="list-style-type: none">• same;• same;• key employees and primary management officials as defined in federal regulations; and• same. (Sec. 5(c)) <p>The Director would not be able to obtain arrest and nonconviction data and information regarding juvenile proceedings.</p> <p>In addition to disclosure exceptions included in the original bill, the Director could disclose background information to the tribe in accordance with a compact. (Sec. 5(d))</p>

<u>Issue</u>	<u>H.B. 2023 as Introduced by LCC</u>	<u>Sub. H.B. 2023 as Amended by House Committee of the Whole</u>
	from criminal justice agencies would be made for information used in a hearing held pursuant to a compact or negotiation by the director with the subject of such information. (Sec. 4(d))	
Tribal law enforcement personnel able to attend Law Enforcement Training Center	Not addressed	The bill would permit employees of tribal law enforcement agencies to attend the Law Enforcement Training Center. (Sec. 9)
KBI monitoring	The bill would require the KBI to monitor gambling conducted under any gaming compact to ensure compliance with the compact. The Bureau would be required to provide the Director of Indian Gaming with periodic reports of those monitoring activities. KBI agents would have reasonable access to all areas of facilities where gambling is conducted under a compact. During regular business hours, the Bureau also would have access to all records of gambling conducted under a compact. Such access could not interfere unnecessarily with normal operation of gambling. (Sec. 5)	Same (Sec. 6)
Funds received under a compact	The bill would create the Indian Gaming Fund in the state treasury as the repository for any money due to the state or to any subdivision of the state under a compact. All operating expenses of the Division of Indian gaming and all expenses incurred by any other state agency in implementing its duties under a gaming compact would have to be paid from the Indian Gaming Fund. In the event the Legislature finances from the State General Fund, the operation of the Division of Indian Gaming or other agencies involved in implementing state responsibilities under a compact, that financing would be considered a loan. Any such loan would have to be repaid with interest to the State General Fund in accordance with appropriation acts. (Sec. 6)	Same (Sec. 7)

<u>Issue</u>	<u>H.B. 2023 as Introduced by LCC</u>	<u>Sub. H.B. 2023 as Amended by House Committee of the Whole</u>
Amendments to criminal statutes	The bill amends Kansas' criminal gambling statutes to provide exceptions for activities conducted in accordance with a tribal-state gambling compact. Those amendments would exclude gambling conducted in accordance with a compact from the definitions of illegal bet, illegal lottery, and consideration. Indian gambling activities also would be exempted from the general prohibition against possession of and dealing in gambling devices. (Secs. 7-9)	The bill does not amend Kansas' criminal gambling statutes.
Negotiation with out-of-state tribes	Not addressed	The bill specifically states that it does not authorize the Commission to negotiate and enter into a gaming compact with any Indian tribe that was not historically located within the boundaries of Kansas and the governing body of which was not located in Kansas when IGRA became effective. An exception to that provision would be in the case of land that met the federal definition of Indian land prior to February 1, 1993. (Sec. 3(g))
State waiver of defenses	Not addressed	The bill includes a provision that neither the act nor any gambling compact, can be construed as a waiver of the state's remedies or defenses in any state, federal, or tribal court in connection with any action under IGRA. That provision specifically applies to the state's defenses under the 10th and 11th amendments to the <i>U.S. Constitution</i> . (Sec. 3(h))
Severability clause	Not included	Included (Sec. 8)
Effective date of act	Publication in <i>Kansas Register</i> (Sec. 11)	Same (Sec. 12)