

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 7:50 a.m. on February 19, 1993 in Room 526-S of the Capitol.

All members were present except: Senators Parkinson, Ranson, Rock, Oleen and Feleciano (all excused)

Committee staff present: Michael Heim, Legislative Research Department
Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Mary Ellen Conlee, representing the Potawatomi Tribe
John Pinegar, representing the Wyandotte Tribe

Others attending: See attached list

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

Chairman Moran advised that the Committee would work Sub HB 2023 to arrive at a mechanism for the Legislature to participate in the approval or disapproval of Indian gaming compacts. Three senators and three representatives are now informally participating in the settlement conferences before the Federal District Magistrate Judge on the lawsuit brought against the state alleging the state has acted in bad faith. Enactment of Sub HB 2023 would formalize the settlement process by providing for Legislative input. The Chairman noted the Court has required a report by March 1 as to whether the mechanism is in place.

The six members of the informal negotiating team presented a draft proposal of a Senate Substitute for Sub HB 2023 that incorporates the interests and concerns of the Governor and both houses. Staff briefed the Committee on the proposal noting the general framework used is HB 2023 as introduced by the LCC (Attachment 1). The proposal would provide that the Governor would be the chief negotiator for the state with the compacts being submitted to a joint committee of six legislators once negotiations are completed. The bill would be narrowed to apply to only the four compacts negotiated and signed by the Governor last year. Staff explained that if the joint committee recommends modifications, the Governor takes the recommendations back to negotiating table. The Legislature would have 60 days to approve or reject the compact. Staff noted the joint committee would be authorized, but not required to hold public hearings on the proposed compacts. This proposal would remove all the language from Sub HB 2023 that refers to the establishment of a state agency that would implement state responsibilities and also removes amendments to criminal law from the bill.

In response to a question, the Chair suggested the motivation for the Indian tribes to negotiate with the Legislature is that an agreement would put them in operation sooner than if further legal alternatives had to be pursued at greater expense of time and funds.

The Chair identified three issues to be resolved: (1) should the legislative committee be six or ten member; (2) the scope and application of the mechanism; and (3) should the full legislature approve the compacts or the committee of the legislature and how could legislative approval occur when the Legislature is not in session.

Mary Ellen Conlee, representing the Potawatomi Tribe, testified in favor of a six-member negotiating team that would be allowed to speak for the Legislature. On the issue of negotiating with numerous tribes, Ms. Conlee stated the four Kansas tribes would prefer that the state negotiate with them exclusively. The Indian nations would prefer that the amendments to criminal statutes be left in the bill. Ms. Conlee stated if public hearings are held under the bill, the Indian nations ask that they be held on the reservations. She noted that another reason for negotiations between the state and the Indians is to resolve the issues of shared jurisdiction.

John Pinegar, representing the Wyandotte Tribe, testified that his clients own land in Kansas and they believe under IGRA the state has an obligation to negotiate with them.

By consensus, the Committee agreed to include in the draft bill provisions that the Governor should be the chief negotiator, the legislative committee should be comprised of six members, and that the Legislature

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 529-S Statehouse, at 7:50 a.m. on February 19, 1993.

should advise the Governor on her negotiations with whomever she opens the process. Following lengthy discussion on legislative approval of compacts, the Chairman asked for a show of hands and the members present voted in support of delegating the legislative authority for approval of compacts to the six-member committee. The Chair advised these decisions will be incorporated into a draft bill for consideration and final action by the Committee on Monday, February 22.

The meeting was adjourned at 9:00 a.m. The next meeting is scheduled for today, February 19, at 10:00 a.m.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-19-95

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SENATE SUB. FOR SUB. H.B. 2023 – MAJOR PROVISIONS

Issue	Sen. Sub. for Sub. H.B. 2023
Scope	Establishes procedure for negotiating and executing tribal-state gambling compacts pursuant to the federal Indian Gaming Regulatory Act (IGRA).
Party responsible for negotiation	Governor
Approval of Compacts	Six-member Joint Committee on Gaming Compacts. The Committee would be authorized to approve or recommend modifications to any compact it receives from the Governor.
Execution of Compacts	<p>Upon approval of a compact by the Committee, the Governor would be authorized to enter into the compact on behalf of the state.</p> <p>If the Governor refuses or fails to resume negotiations within 5 days to incorporate modifications recommended by the Joint Committee the Joint Committee could accept the compact as is or could refuse to accept the compact.</p>
Legal counsel	The Attorney General would be legal counsel for the Governor in the negotiations and for the Joint Committee in its review of compacts presented by the Governor.
Support staff	The LCC would provide for professional services as requested by the Joint Committee.
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. Any such request would be treated in the same manner as an initial request for negotiations and new provisions or replacement compacts would require approval of the Joint Committee. 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.
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 and law as embodied in the <i>Kansas Constitution</i> and state law that gaming compacts should address.
Public hearings	The Joint Committee would be authorized, but not required to hold public hearings on proposed gaming compacts submitted by the Governor.

SJ
2-19-93
Attachment 1

<u>Issue</u>	<u>Sen. Sub. for Sub. H.B. 2023</u>
Negotiation and approval procedure	<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.• The Governor or the Governor's designees negotiate.• When the negotiation is complete, the draft compact is submitted to the Joint Committee for approval or recommendation of modifications.• If modifications are recommended, negotiations resume and the modified compact is resubmitted to the Joint Committee.• When the compact is approved by the Joint Committee, the Governor enters into the compact on behalf of the state.
Approval of existing compacts	Same as for new compacts, above.
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.
Additional legislation	The Joint Committee would be authorized to introduce legislation.
Severability clause	Included
Effective date of act	Publication in <i>Kansas Register</i>