

House Resolution No. 6015

By Committee on Federal and State Affairs

3-9

1 A RESOLUTION requesting that the Attorney General bring an action in
2 quo warranto in a court of competent jurisdiction against the Kansas
3 Racing and Gaming commission and its members, the Kansas Lottery
4 Commission and its members and the Kansas Lottery Gaming Facility
5 Review Board and its members and challenging the constitutionality
6 of K.S.A. 74-8762(e) and such other claims as the Attorney General
7 may deem warranted under the circumstances.

8 WHEREAS, In 2010, Peninsula Gaming Partners LLC and Global
9 Gaming KS LLC submitted proposals to the Kansas Lottery Commission
10 for developing and managing a lottery gaming facility in Sumner County;
11 and

12 WHEREAS, In a meeting on September 8, 2010, the Kansas Lottery
13 Commission approved lottery gaming facility management contracts with
14 Peninsula Gaming and Global Gaming for a casino in Sumner County,
15 provided the companies received local planning and zoning approvals;
16 and

17 WHEREAS, In October, 2010, a special prosecutor for the state of
18 Iowa charged Peninsula Gaming Partners LLC and two executives of the
19 company, the chief executive officer and the chief operating officer, with
20 illegally funneling \$25,000 in contributions through a third party to the
21 re-election campaign of a candidate for governor; and

22 WHEREAS, The trial of this matter is scheduled to begin in June,
23 2011, in Iowa; and

24 WHEREAS, In a meeting on December 15, 2010, the Kansas Lottery
25 Gaming Facility Review Board selected Peninsula Gaming as the
26 developer and manager of the casino in Sumner County; and

27 WHEREAS, In a meeting on January 14, 2011, the Kansas Racing and
28 Gaming Commission approved the background checks of Peninsula
29 Gaming key officials and approved the casino development and
30 management contract with the company; and

31 WHEREAS, The Kansas Expanded Lottery Act (K.S.A 74-8733 et.
32 seq.) was enacted with the specific requirement in K.S.A. 74-8734 that
33 the Kansas Lottery Commission “adopt standards to promote the integrity
34 of gaming and finances of lottery gaming facilities, which shall apply to
35 all management contracts, shall meet or exceed industry standards for
36 monitoring and controlling the gaming and finances of gaming facilities

1 and shall give the executive director sufficient authority to monitor and
2 control the gaming operations and to ensure its integrity and security”;
3 and

4 WHEREAS, The Kansas Expanded Lottery Act (K.S.A. 74-8736)
5 requires the Kansas Lottery Facility Review Board determine that a
6 gaming facility management contract is the “best possible such contract”
7 prior to the contract becoming binding on the parties; and

8 WHEREAS, The Kansas Expanded Lottery Act (K.S.A. 74-8751)
9 requires the Kansas Racing and Gaming Commission to adopt rules and
10 regulations relating to certification requirements by implementing such
11 background investigations and standards for applicants, as may be
12 “necessary to determine whether such person’s reputation, habits or
13 associations pose a threat to the public interest of the state or to the
14 reputation of or effective regulation and control of the lottery gaming
15 facility.”; and

16 WHEREAS, The Kansas Expanded Lottery Act (K.S.A. 74-8751 and
17 74-8772) directs the Kansas Racing and Gaming Commission to adopt
18 rules and regulations for suspension, revocation or nonrenewal of a
19 certification and promoting the integrity of the lottery and racetrack
20 gaming facilities in Kansas; and

21 WHEREAS, K.A.R. 112-101-6(b) provides that a certification may be
22 denied, suspended or revoked if the certificate holder or its officers,
23 directors, key gaming employees, or any person directly or indirectly
24 owning an interest of at least 0.5% in the applicant, poses a threat to the
25 public interest or to the effective regulation of gaming; or creates or
26 enhances the dangers of unfair or illegal practices in the conduct of
27 gaming; and

28 WHEREAS, The Kansas Expanded Lottery Act (K.S.A. 74-8734(o))
29 provides that a lottery gaming facility shall comply with any planning and
30 zoning regulation of the city and county in which it is to be located and
31 that the executive director shall not contract with any prospective lottery
32 gaming facility manager who lacks proper approvals under the planning
33 and zoning requirements of the city or county in which the facility is to be
34 located; and

35 WHEREAS, Compliance with local planning and zoning requirements
36 for the proposed Sumner County lottery gaming facility requires zoning
37 changes, a special use permit, approval of a planned unit development
38 application, a variance, site plan and plat approval; and

39 WHEREAS, Final action by the appropriate local government entities
40 as to all planning and zoning matters was not complete at the time of the
41 approval of the Peninsula Gaming facility management contract; and

42 WHEREAS, The state has an interest in determining under what
43 authority the Peninsula Gaming facility management contract was

1 approved given the conditions precedent to approval set forth at K.S.A.
2 74-8734(o); and

3 WHEREAS, The Kansas Expanded Lottery Act (K.S.A. 74-8762(e))
4 purports to limit the authority of state officials, including legislators, to
5 act in their official capacity to perform their legislative duties; and

6 WHEREAS, The matters delineated above are areas of legitimate
7 public interest and concern and as such implicate traditional areas of
8 legislative action as reserved to the legislature under Article 2 of the
9 Constitution of the State of Kansas; and

10 WHEREAS, The state has an interest in determining the
11 constitutionality of a provision of the Kansas Expanded Lottery Act
12 (K.S.A. 74-8762e) which purports to limit the power of state officials and
13 state legislators under the Kansas and United States Constitutions;

14 WHEREAS, Pursuant to K.S.A. 75-702 the Attorney General shall,
15 when required by either branch of the legislature, appear for the state and
16 prosecute in any court, any matter in which the state may be interested:
17 Now, therefore,

18 *Be it resolved by the House of Representatives of the State of Kansas:*
19 That in accordance with K.S.A. 75-702, the Attorney General of the State
20 of Kansas is hereby required to bring: (a) an action in quo warranto in a
21 Court of competent jurisdiction against the Kansas Racing and Gaming
22 Commission and its members, the Kansas Lottery Commission and its
23 members and the Kansas Lottery Gaming Facility Review Board and its
24 members to determine under what authority the gaming facility
25 management contract with Peninsula Gaming was approved given the
26 requirements of K.S.A. 74-8762(e); (b) an action challenging the
27 Constitutionality of K.S.A. 74-8762(e) as applied to the Kansas
28 legislature and its members and other affected public officials, and; (c)
29 such other claims as the Attorney General may deem warranted under the
30 circumstances; and

31 *Be it further resolved:* That the Chief Clerk of the House of
32 Representatives shall send enrolled copies of this resolution to the
33 Attorney General of the State of Kansas.

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