

**As Amended by House Committee**

*Session of 2011*

**House Resolution No. 6015**

By Committee on Federal and State Affairs

3-9

1 A RESOLUTION ~~requesting~~ **requiring** that the Attorney General bring an  
2 action in quo warranto in a court of competent jurisdiction against the  
3 Kansas Racing and Gaming commission and its members, the Kansas  
4 Lottery Commission and its members and the Kansas Lottery Gaming  
5 Facility Review Board and its members and challenging the  
6 constitutionality of K.S.A. **2010 Supp.** 74-8762(e) and such other  
7 claims as the Attorney General may deem warranted under the  
8 circumstances.

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

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

17 WHEREAS, In October, 2010, a special prosecutor for the state of Iowa  
18 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 re-  
21 election campaign of a candidate for governor; and

22 WHEREAS, The trial of this matter is scheduled to begin in June, 2011,  
23 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. **2010 Supp.** 74-  
32 8733 et. seq.) was enacted with the specific requirement in K.S.A. **2010**  
33 **Supp.** 74-8734 that the Kansas Lottery Commission “adopt standards to  
34 promote the integrity of gaming and finances of lottery gaming facilities,  
35 which shall apply to all management contracts, shall meet or exceed

1 industry standards for monitoring and controlling the gaming and finances  
2 of gaming facilities and shall give the executive director sufficient  
3 authority to monitor and control the gaming operations and to ensure its  
4 integrity and security”; and

5 WHEREAS, The Kansas Expanded Lottery Act (K.S.A. **2010 Supp.**  
6 74-8736) requires the Kansas Lottery Facility Review Board determine  
7 that a gaming facility management contract is the “best possible such  
8 contract” prior to the contract becoming binding on the parties; and

9 WHEREAS, The Kansas Expanded Lottery Act (K.S.A. **2010 Supp.**  
10 74-8751) requires the Kansas Racing and Gaming Commission to adopt  
11 rules and regulations relating to certification requirements by  
12 implementing such background investigations and standards for  
13 applicants, as may be “necessary to determine whether such person’s  
14 reputation, habits or associations pose a threat to the public interest of the  
15 state or to the reputation of or effective regulation and control of the  
16 lottery gaming facility.”; and

17 WHEREAS, The Kansas Expanded Lottery Act (K.S.A. **2010 Supp.**  
18 74-8751 and 74-8772) directs the Kansas Racing and Gaming Commission  
19 to adopt rules and regulations for suspension, revocation or nonrenewal of  
20 a certification and promoting the integrity of the lottery and racetrack  
21 gaming facilities in Kansas; and

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

29 WHEREAS, The Kansas Expanded Lottery Act (K.S.A. **2010 Supp.**  
30 74-8734(o)) provides that a lottery gaming facility shall comply with any  
31 planning and zoning regulation of the city and county in which it is to be  
32 located and that the executive director shall not contract with any  
33 prospective lottery gaming facility manager who lacks proper approvals  
34 under the planning and zoning requirements of the city or county in which  
35 the facility is to be located; and

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

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

43 WHEREAS, The state has an interest in determining under what

1 authority the Peninsula Gaming facility management contract was  
2 approved given the conditions precedent to approval set forth at K.S.A.  
3 **2010 Supp. 74-8734(o)**; and

4 WHEREAS, The Kansas Expanded Lottery Act (K.S.A. **2010 Supp.**  
5 74-8762(e)) purports to limit the authority of state officials, including  
6 legislators, to act in their official capacity to perform their legislative  
7 duties; and

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

12 WHEREAS, The state has an interest in determining the  
13 constitutionality of a provision of the Kansas Expanded Lottery Act  
14 (K.S.A. **2010 Supp. 74-8762e**) which purports to limit the power of state  
15 officials and state legislators under the Kansas and United States  
16 Constitutions;

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

21 *Be it resolved by the House of Representatives of the State of Kansas:*

22 That in accordance with K.S.A. 75-702, the Attorney General of the State  
23 of Kansas is hereby required to bring: (a) an action in quo warranto in a  
24 Court of competent jurisdiction against the Kansas Racing and Gaming  
25 Commission and its members, the Kansas Lottery Commission and its  
26 members and the Kansas Lottery Gaming Facility Review Board and its  
27 members to determine under what authority the gaming facility  
28 management contract with Peninsula Gaming was approved given the  
29 requirements of K.S.A. ~~74-8762(e)~~ **2010 Supp. 74-8734(o) and 74-8751**;  
30 (b) an action challenging the Constitutionality of K.S.A. **2010 Supp. 74-**  
31 **8762(e)** as applied to the Kansas legislature and its members and other  
32 affected public officials, and; (c) such other claims as the Attorney General  
33 may deem warranted under the circumstances; and

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