

SUBJECT: Continuing the Lottery Commission and amending bingo regulations

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 5 ayes — Wilson, McCall, J. Keffer, Paxton, Ritter

0 nays

4 absent — Pitts, Hilderbran, Luna, Woolley

SENATE VOTE: On final passage, May 7 — voice vote (Deuell recorded nay)

WITNESSES: *(On original version:)*

For — Glen Castelbury, Texas Elks State Association; Bill Pewitt, Texas Charitable Bingo Association

Against — None

LOTTERY COMMISSION

BACKGROUND: Under Government Code, ch. 467, the Texas Lottery Commission comprises three members appointed by the governor with the advice and consent of the Senate. The governor designates one member as presiding officer to serve at the governor's pleasure. The commission must hold at least six regular meetings each year on fixed dates. It may meet at other times at the call of the presiding officer or as provided by commission rule. The commission must employ an executive director to administer its two divisions, which oversee the state lottery and charitable bingo. The executive director must employ a director for each division. In fiscal 2002, the commission operated with 317 full-time equivalent employee positions.

The State Lottery Act (Government Code, ch. 466) governs operations of the state lottery. These include licensing more than 16,000 lottery retailers, maintaining and monitoring retailer accounts and contracts, operating 22 claim centers, conducting lottery retailing services, marketing, research, and arranging and financing security. In fiscal 2002, these and other functions cost \$180.2 million. Lottery operations that year generated nearly \$3 billion

in revenue, of which more than \$900 million was transferred to the Foundation School Fund, the Multicategorical Teaching Hospital Account, and the Tertiary Care Facility Account.

Sec. 466.317 authorizes the state to enter into a compact with another state or state government or with an Indian tribe or tribal government to permit the sale of Texas lottery tickets in the other jurisdiction and to allow the sale of the state's or tribe's lottery tickets in Texas.

The Lottery Commission and its lottery division are subject to the Sunset Act and will expire September 1, 2003, unless continued by the Legislature.

DIGEST:

CSSB 270 would continue the Texas Lottery Commission, the State Lottery Act, and the Bingo Enabling Act (Occupations Code, ch. 2001) until 2015. It would repeal the separate sunset provision for the lottery division.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

Multijurisdiction lottery. The commission could enter into a written agreement with one or more other states or jurisdictions, including foreign countries, to participate in the marketing and operation of multijurisdiction lottery games. Under a multijurisdiction lottery, the commission could:

- adopt rules related to a game;
- deposit a portion of revenue received from the sale of the lottery tickets in a fund shared with other parties to the agreement for paying prizes awarded;
- retain revenue in the shared fund for as long as necessary to pay prizes claimed during the period designated for claiming a prize in the lottery game; and
- share in payment of costs associated with participating in the lottery.

Revenue received from the sale of tickets in Texas for a multijurisdiction lottery game would be subject to existing revenue statutes under Government Code, ch. 466, subch. H.

Location of lottery sales. CSSB 270 would repeal a provision requiring denial, suspension, or revocation of a license to sell lottery tickets for a person whose location for the lottery sales agency was a location for which a person held a wine and beer retailers' permit, mixed beverage permit, mixed beverage late-hours permit, private club registration permit, or private club late-hours permit under the Alcoholic Beverage Code. The lottery director could amend a license to reflect a different location for the lottery sales agency if in compliance with the lottery act, following application by the sales agent. The written application would require a fee at least sufficient to cover the costs incurred by the division for processing the amendment, as determined by the director. The agent would have to certify that the proposed location complied with the federal Americans with Disabilities Act.

Licensing. In determining whether to renew a license, the commission would have to consider the license holder's compliance history. The commission would have to adopt rules to govern the areas of compliance history that could be considered in the determination. After an opportunity for a hearing, the commission could deny a license renewal application if the applicant's compliance history revealed conduct inconsistent with the State Lottery Act or commission rules.

If a sales agent failed upon request to provide a complete legible set of fingerprints of a person required to be named in a lottery license application, the commission could suspend summarily the sales agent's license. The commission also could suspend a license without notice or hearing if the person failed to provide the fingerprints and the commission found that suspension was necessary to maintain the integrity, security, honesty, or fairness of the lottery's operation or to prevent financial loss to the state. The commission could adopt a system for staggering license expirations and requiring prorated license fees accordingly.

Liability. A former officer, director, or owner of a lottery sales agent could incur liability for the loss of state assets caused by a person if a sales agent failed to notify the director that the person had ceased to be an officer, director, or owner of a sales agent and such notification was required because of contrary representations made in the most recent application for a license or license renewal.

Intellectual property. The commission could acquire, hold, and protect patents, copyrights, trademarks, and similar identifications of intellectual property. It could contract with a person so as to profit from the intellectual property. Money paid the commission would be deposited in general revenue. The commission's intellectual property would be exempt from state law governing public information between the date when the commission decided to seek legal protection of the property and when it received a decision on its application for protection. The commission could not be required to disclose a trade secret from the time of its creation until it was disclosed publicly by the commission with the intention that the secret be so disclosed.

Lottery merchandise. CSSB 270 would authorize the commission to make promotional merchandise available to market and sell to promote ticket sales. The executive director would have to propose rules to the commission for marketing the lottery promotional merchandise. Sale proceeds, less the cost of advertising and related expenses, would be deposited in general revenue.

Miscellaneous. The bill would allocate \$500,000 from the state lottery account in each fiscal biennium to the comptroller to provide grants to state residents to pay the costs of attending a public junior college, technical institute, or state college. The comptroller by rule governing eligibility, academic performance, and grant amounts would have to administer the grants for the benefit of deserving students.

The commission could buy or lease facilities, goods, and services and could make any purchases, leases, or contracts necessary to carry out the purpose of the State Lottery Act. The commission would have to establish a rule to identify a major procurement and would have to review and approve all major procurement as provided by commission rule.

After a lottery ticket was validated, the name of any person who claimed a prize would be public information.

The bill also would require that:

- a contract between the lottery division and an operator contain a provision allowing contract termination without penalty if the division was abolished;

- records excepted from public record disclosure rules would include personal information that identified a person collected as part of a player database;
- the commission develop a comprehensive business plan and review it annually to guide the commission's major initiatives;
- a person who claimed a lottery prize to disclose the person's name and social security number or employer identification number;
- a legal entity that claimed a lottery prize to disclose all legal and beneficial interests in the entity to the commission by sworn statement in accordance with commission rules; and
- the commission not to employ a person who would be denied a license as a sales agent because of certain criminal convictions, history of professional gambling, tax delinquency, or other reason stated under Government Code, sec. 466.155.

The bill also would include standard sunset provisions governing conflict of interest, commissioner training, removal of a commissioner, technology policy, negotiated rulemaking and alternative dispute resolution, public testimony, records maintenance, complaint notification, separation of policy and staff functions, equal employment opportunity policy, and the State Employee Incentive Program.

**SUPPORTERS
SAY:**

CSSB 270 would make conventional but necessary changes in law governing the state lottery. The current budget shortfall requires the state to embrace other means of raising revenue without punishing residents with untimely tax increases. For example, participation in a multijurisdiction lottery like the successful "Powerball" lottery game likely would yield about \$100 million in the coming biennium, with a similar revenue stream in later years. Allowing more restaurants and bars to sell lottery tickets, as in other states, similarly would yield an additional \$4.5 million to \$30 million in each future year. Since its inception in 1992, the lottery has returned more than \$10 billion to Texas, without which the state could not have funded adequately public education and other critical services. Provisions of CSSB 270 were crafted carefully to ensure that the Texas lottery grows as a viable revenue source funded exclusively by volunteers.

Other provisions also would enable the state to generate revenue through the Lottery Commission. Because the commission eventually might develop

intellectual property or valuable lottery merchandise, the bill would provide for the protection, promotion, and capture of revenues that could result from innovations in these areas.

CSSB 270 would provide sensible safeguards to ensure that the state enjoys only benefits from a multijurisdiction lottery. It would authorize, not require, the commission to enroll the state in such a lottery. The commission could decide against entering into any agreement with another state or country if it would not benefit Texas.

The same standards that apply now to applicants for lottery sales licenses would apply to applicants who operated restaurants or bars. As in the past, these standards would help ensure that only responsible sales agencies could exercise the right to sell lottery tickets. Patrons who are drinking alcoholic beverages are at least 21 years old and presumably can exercise reasonable judgment about their spending.

More than \$900 million of lottery revenue was transferred to the Foundation School Fund last year to help prepare Texas youths for higher education. With more lottery ticket sales in future years, the Legislature may be able to direct more sales proceeds to higher education funding.

**OPPONENTS
SAY:**

CSSB 270 would place the state and its residents on a slippery slope of permissive lottery dealings that would cost the public in the longer term by improperly increasing the “footprint” of state-sponsored gaming.

The multijurisdiction lottery provision wrongly would lead state government further from its core purposes. By offering the prospect of winning larger sums, albeit it with the smallest of odds, the state would entice more residents to spend frivolously and diminish their security instead of investing their earnings in their futures. While the private market may offer people opportunities to spend unwisely, state government should not act as a sponsor of such activity on an increasing scale.

Additional lottery sales likely would not remedy any financial problem faced by the state, because lottery profits typically are used as a substitute for tax dollars, not as a supplement to them. Rather than resort to a lottery and other

gaming contrivances to finance public education and other necessities, the state should reform its tax policies to accommodate needed spending.

The multijurisdiction lottery provision would authorize the state to entangle itself in lottery enterprises extending to Mexico and beyond. Enforcement of any international compact to ensure that Texas received its share from the common lottery account contemplated under CSSB 270 would prove difficult, if not impossible, if the member in breach were a foreign state. No American court would have jurisdiction. Also, the prospect of larger winnings through lottery participation likely would entice spending by game enthusiasts who otherwise would play bingo. This change would cost charities and others who benefit from and rely on bingo expenditures.

CSSB 270 would repeal a sensible prohibition on the operation of lottery sales agencies in private clubs, the premises of wine and beer retailers, and other places where people buy and consume alcohol. This restriction provides some separation between a temptation created by the state and the impulses of people who may be suffering from impaired judgment or even alcoholism, depression, or another disease caused by alcohol consumption. The buffer between lottery sales and alcohol consumption should remain in effect.

OTHER
OPPONENTS
SAY:

In light of the greater revenue that a multijurisdiction lottery would generate for the state, CSSB 270 should allocate to the comptroller far more than \$500,000 from lottery proceeds each biennium for grants to state residents to attend higher education institutions. Texas' economy is in transition away from dependence on natural resources and ordinary manufacturing, yet the state's enrollment rate for higher education lags substantially behind the national average. Because income and educational levels correlate strongly, the state must increase quickly and dramatically the number of students attending and completing higher education.

The Legislature should increase the size of the Lottery Commission from three to five members. As a part-time policy body, the commission members cannot discuss the agency's work informally without violating the open meetings act. Also, the commission cannot form subcommittees to help it oversee the agency. A five-member commission would be more similar in size to other state commissions and to other states' lottery commissions.

BINGO

BACKGROUND: The Lottery Commission regulates charitable bingo under Occupations Code, ch. 2001. Since 1981, state-licensed nonprofit organizations in Texas have been allowed to conduct bingo games if voters in the local political subdivision approve the games in an election. Proceeds from bingo games must be spent on charitable purposes, although conductors of the games may deduct certain types of expenses before distributing money for charitable endeavors. About 200 jurisdictions in Texas have approved charitable bingo. In 2001, charitable bingo generated about \$567 million in revenue, of which about \$34.4 million was spent on charitable purposes.

The Lottery Commission, through its bingo division, regulates bingo and licenses the nonprofit organizations (called conductors), lessors of bingo halls, manufacturers and distributors of bingo supplies, and providers of automated bingo system services. Lessors can be either be charities that lease space to other charities to hold bingo games or for-profit commercial lessors that lease bingo halls to the nonprofit groups that operate the games. The Lottery Commission regulates prizes, accounting methods, and other details of the games. The commission licenses about 1,450 charitable organizations to conduct bingo games, 468 commercial lessors, 16 distributors, 14 manufacturers, and two system service providers.

Occupations Code, sec. 2001.101 establishes the types of organizations that can be licensed to conduct bingo. They include religious societies that have existed in Texas for at least eight years; certain nonprofit organizations that support medical research and treatment programs; nonprofit fraternal organizations; nonprofit veterans organizations; and volunteer fire departments. Nonprofit organizations must have tax-exempt status under the U.S. Internal Revenue Code, sec. 501(c).

The statutes require bingo operators to make a charitable distribution of a minimum of bingo profits each quarter. Charities must distribute at least 35 percent of adjusted gross receipts, less deductions for statutorily authorized expenses. These expenses include bingo supplies, prizes, advertising, security, repairs, rent, mortgages or insurance expenses, bookkeeping, legal,

or accounting services; payroll for certain positions; license fees; and health insurance for employees. Money not accounted for by this formula can be used by charities for charitable contribution or other expenses, or can be placed in a bingo savings account for future distribution.

Sec. 2001.454 lists activities that define the charitable purposes to which bingo proceeds must be devoted. It requires that net proceeds be directed to a cause, deed, or activity that:

- benefits needy or deserving people in Texas by enhancing their opportunity for religious or educational advancement; relieving them from disease, suffering, or distress; contributing to their physical well-being; assisting them in establishing themselves as worthy and useful citizens; or increasing their comprehension of and devotion to the principles on which the United States was founded and enhancing their loyalty to their government; or
- initiates, performs, or fosters worthy public works in Texas or enables or furthers the erection or maintenance of public structures in Texas.

A 5 percent tax is imposed on prizes, of which counties and cities can choose to receive a portion. In 2001, \$20.1 million was collected in prize fees, of which \$9.2 million went to local jurisdictions and \$9.2 million went to state general revenue. In addition, a 3 percent gross rental tax is imposed on rental income received by people who lease premises for conducting bingo games.

The Lottery Commission appoints a nine-member Bingo Advisory Committee representing the public, bingo conductors, commercial lessors, charity lessors, distributors and manufacturers, and system service providers.

DIGEST:

CSSB 270 would establish a new class of licensees for people associated with bingo; expand who can receive commercial lessor licenses; require the commission to make changes in general licensing procedures; change the requirements for distributions of bingo proceeds to charitable endeavors; make changes in what organizations can be authorized to conduct bingo; increase penalties for some bingo criminal offenses; give the commission certain enforcement powers; and require the issuance of advisory opinions.

Requiring licensing of “authorized organization employees.” CSSB 270 would create a new category of people who would have to be licensed by the commission: authorized organization employees. It would prohibit people from participating or assisting in the conduct, promotion, or administration of bingo in any capacity unless they held an authorized organization employee license issued by the commission.

The commission would have to issue an authorized organization employee license to an eligible person who applied and paid a required fee to be set by the commission. Licenses would be valid for terms set by the commission, up to 36 months. Licenses would have to be denied, revoked, or suspended if the bingo director or the commission determined that the applicant:

- had violated the bingo statutes or a commission rule;
- had been convicted of a felony or a crime involving moral turpitude;
- failed to answer or answered falsely or incorrectly a question in the license application;
- was indebted to the state for fees or penalties imposed by the bingo act or a commission rule;
- was not of good moral character;
- lived in the same household as a person whose license had been revoked for cause in the 12 months preceding the applicant’s most recent license application;
- had failed to furnish a true copy of the application; or
- was engaged or had engaged in activities or practices detrimental to the best interests of the public.

It would be a third-degree felony (punishable by two to 10 years in prison and an optional fine of up to \$10,000) knowingly to participate or assist in the conduct, promotion, or administration of bingo without holding a required license. The commission would have to revoke the license of an authorized organization to conduct bingo if the organization employed or used an unlicensed person in an activity that required an authorized organization employee license.

The commission could issue temporary licenses for authorized organization employees while investigating the applicant’s eligibility for a license or a renewal. Temporary licenses could not be valid for more than 120 days.

The commission would have to issue license numbers and identification cards that included photographs to these authorized organization employees. The licensees would have to wear the identification card at all times while participating in the conduct, promotion, or administration of bingo.

For each bingo occasion, licensed organizations would have to maintain a record of each person who participated or assisted in the conduct, promotion, or administration of bingo. The records would have to include the fees or other compensation paid to the person for services. Licensed organizations would have to submit annual reports to the commission that detailed each job category related to the conduct of bingo for which the organization compensated someone, the compensation rates paid in each category, and the number of employees paid each rate.

Commercial lessor licensing. CSSB 270 would revise current law delineating who can receive commercial lessor licenses so that the commission could issue commercial lessor licenses only to people who leased premises for bingo to up to seven licensed organizations.

The bill would eliminate provisions allowing commercial lessor licenses to be issued only to four types of entities. It also would repeal provisions that prohibit commercial lessor licenses from being issued to certain types of entities that are not based in Texas or are publicly traded corporations.

License qualifications. The commission would have to use rules to establish comprehensive qualifications for people to be licensed and for licenses to be renewed, to develop a standard license renewal process, and to establish standards of conduct for licensees.

The commission would have to consider the compliance history of licensees when deciding whether to renew a license. The commission could deny a license renewal, after an opportunity for a hearing, if the licensee's compliance history revealed conduct that was inconsistent with the statutes or the commission's rules. Organizations using temporary licenses to conduct bingo would be subject to the standard licensing oversight of the commission, including audits and inspections

Bingo proceeds and distributions for charitable endeavors. The bill would

remove from current law the list of causes, deeds, and activities that define the charitable purposes to which the proceeds from bingo games must be devoted. Instead, the bill would require that organizations devote net bingo proceeds and net proceeds from the rental of premises to the charitable purposes of the organization consistent with the federal tax exemption under which the organization qualified as a nonprofit organization.

The commission would have to establish a maximum amount of net proceeds as operating capital that a bingo conductor could have in its bingo account. Instead of requiring organizations to disburse for charitable purposes at least 35 percent of their adjusted gross receipts, CSSB 270 would require that organizations disburse all of their adjusted gross receipts except for the amount that could be retained in their bingo account under the new rules to be established by the commission. The definition of adjusted gross receipts would be amended to mean gross receipts less the total paid in prizes in the preceding quarter and the organization's reasonable and necessary expenses, as defined elsewhere in the code and by commission rule. The commission would have to sanction an organization that failed to make the required disbursements of its income.

Authorized organizations. CSSB 270 would eliminate the current requirements that certain types of organizations be in existence for specified numbers of years to be authorized to conduct bingo. Instead, the commission could specify by rule the amount of time that organizations would have to have been in existence.

Penalties and enforcement. CSSB 270 would increase criminal penalties associated with bingo. Failing to maintain proper records, falsifying certain entries into books or records dealing with the conduct of bingo, the leasing of bingo premises, or the manufacture, sale, or distribution of bingo supplies, and violating the bingo act or a term of a license would be increased from a Class C misdemeanor (maximum fine of \$500) to a Class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Diverting or paying a portion of bingo net proceeds to a person except for a lawful purpose under the bingo act would be increased from a Class A misdemeanor to a third-degree felony (two to 10 years in prison and an

optional fine of up to \$10,000). Making a false statement or material omission on a license application would remain a Class A misdemeanor.

CSSB 270 would allow certain criminal offenses relating to bingo to be prosecuted in Travis County in addition to other counties.

The commission could establish procedures for suspending licenses summarily. It would have to adopt an administrative penalty schedule to define and summarize violations of the statutes or commission rules to ensure that penalties were appropriate. The commission also would have to establish a time line for resolving violations.

The commission could issue subpoenas to compel the attendance and testimony of witness or the production of evidence. The bill would establish procedures and requirements for the subpoenas.

Advisory opinions from bingo division. People could request from the director of the bingo division an advisory opinion about compliance with the laws and rules. The director would have to respond to a request within deadlines set by the bill. People who requested opinions could rely on them if their conduct was substantially consistent with the opinion.

Director of bingo operations. The commission would have to employ a director of bingo operations, instead of the current requirement that the executive director of the Lottery Commission hire a director to oversee the bingo division. The director would have broad authority and would have to exercise strict control and close supervision over all bingo games in Texas to promote and ensure integrity, security, honest, and fairness in the regulation and administration of bingo.

Other bingo provisions. CSSB 270 would make many other changes to the statutes governing bingo, including:

- adding to the list of items that are considered approved expenses that can be paid for in connection with a bingo game: maintenance of premises and equipment; printing of bingo gift certificates; fees for sales personnel; costs of attending a bingo seminar or convention; debit-card transaction fees; and salaries for a manager to act as the

- operator for conducting, promoting, or administering bingo;
- eliminating requirements that not more than two licensed organizations can conduct bingo at the same premises in a 24-hour period;
- allowing bingo operators and commercial lessors to file a joint application to take over the time and location of a bingo game that had been canceled because another bingo conductor had stopped or would be stopping a bingo game or because the organization's lease had been or would be terminated;
- allowing two or more licensed organizations that conduct bingo at the same location to join together to share revenues, expenses, and inventory, called unit accounting;
- allowing two or more licensed organizations conducting bingo at the same premises to hire bingo employees jointly;
- allowing issuance of licenses that would be effective for two years instead of one year and allowing a licensee who wanted a two-year license to pay twice the annual fee plus another charge;
- requiring the commission to support the efforts of licensed organizations to develop and offer new types of bingo games and to apply new technology to the games;
- allowing bingo to be conducted without a license at company picnics or meetings, family reunions, or other defined group occasional gatherings if certain conditions were met; and
- eliminating a current restriction that no more than 40 percent of the people attending a bingo occasion can use electronic or mechanical card-minding devices and repealing the current limit of no more than five pull-tab dispensers operating on one premise.

**SUPPORTERS
SAY:**

CSSB 270 would improve the state's regulatory oversight of charity bingo to help ensure that the games are honest and that charities benefit from the games' profits. Because of the large amounts of cash involved in these games, it is necessary for the state to have adequate powers to oversee the games so that qualified, honest charities — and not other unscrupulous entities — benefit from the games. The bill's provisions would make bingo operations more efficient and would clear up confusion among operators, distributors, and lessors about several parts of the current statutes.

Requiring license for “authorized organization employees.” It is necessary to establish a new, broad class of bingo licensees so that the commission can

have adequate regulatory authority. Currently, the commission's regulatory reach stops at the organization that is licensed to conduct bingo. The commission can take action against an employee of the organization only by going after the organization itself. This could mean that an organization had to stop conducting bingo because of one person's actions. CSSB 270 would remedy this by giving the commission authority over all employees.

The bill would grant the commission oversight of all those participating or assisting in bingo to ensure proper oversight, but the provisions are not so broad as to include people who are not part of the bingo games. The requirements of licensees would be appropriate and modeled after those found in the statutes governing parimutuel racing.

Commercial lessor licensing. CSSB 270 would repeal statutes that give advantages to certain commercial lessors to help ensure that these entities operate on a level playing field and that others could become lessors. These provisions would not harm charities — and in fact might help them — because more commercial lessors could be available. The bill would allow anyone to receive a license but, like current law, would limit subleases to seven entities to ensure that lessors do not become too large to be regulated effectively.

License qualifications. CSSB 270 would amend the commission's licensing procedures to ensure that they are fair to licensees, adequately protect the public, and safeguard charitable revenue. The bill would achieve these objectives by requiring that the commission establish the qualifications for licensing and license renewals and a standard license renewal process so that all licensees would be subject to the same requirements and the public and licensees could be aware of the qualifications.

CSSB 270 would subject temporary licenses to the commission's standard licensing oversight to ensure that they were evaluated adequately and fairly and that charitable revenue from games operated by people using temporary licenses was protected and the public was assured of the competency of the licensees. Also, the commission would have to review licensees' history of compliance with statutes and commission rules before renewing a license to ensure that the licensees were performing as required.

Bingo proceeds and distributions. CSSB 270 would clear up confusion over how proceeds from bingo can be used, but it would not change the eligibility requirements that define what type of organization can conduct bingo in Texas. This change would not expand the kinds of organizations that can conduct bingo, nor would it lead to all nonprofits being able to conduct bingo. Bingo conductors still would have to be charities that met other requirements in the code. The change made by CSSB 270 would address only how charities could spend bingo proceeds.

Much confusion exists over how charities legally can spend net bingo proceeds for charitable purposes. For example, while most agree that a charity could spend proceeds on a scholarship for a needy young person, questions exist about whether bingo proceeds could be used to publicize the scholarship to schools or even to send a letter to the person who had been awarded the scholarship. CSSB 270 would clear up this confusion by stating that net bingo proceeds must be used for the charitable purpose that was used to qualify the organization as a nonprofit organization under the federal tax code, as described by U.S. Internal Revenue Service (IRS) publications.

CSSB 270 would simplify the distribution of bingo proceeds to charities to ensure that a fair amount of money went for charitable purposes. The current formula used to decide the charitable distribution is confusing and burdensome and can result in some charities not being required to make any charitable contributions, often because they spend so much on prizes and authorized expenses. The bill would address these problems by changing the distribution formula so that charities would have to distribute all of their adjusted gross receipts except for amounts that the commission determined could be retained. It would be appropriate to give the commission the flexibility to determine the amount that could be retained, rather than establishing a statutory amount that could not be changed when necessary.

Authorized organizations. CSSB 270 would eliminate the arbitrary requirements in current law that require different types of nonprofit organizations to have been in existence for different amounts of time before they can be licensed. For example, religious organizations must have existed in Texas for at least eight years, and fraternal organizations for three. There is no sound basis for these restrictions, and they serve no public protection purpose. CSSB 270 would ensure that organizations wishing to conduct bingo

were legitimate by authorizing the commission to establish standard time periods for organizations to have been in existence.

Penalties and enforcement. The penalties established by CSSB 270 would be appropriate for bingo offenses and necessary to provide adequate oversight of the industry and to punish properly those who abuse the public trust by violating laws designed to ensure that bingo is run honestly and fairly. To ensure that appropriate penalties were assessed for violating the statutes and commission rules, CSSB 270 would require the commission to adopt an administrative penalty schedule.

It is not unusual for a state regulatory body to be given subpoena power. CSSB 270 would allow certain criminal offenses to be prosecuted in Travis County, since this is the venue where bingo licenses are issued and because Travis County has authority and experience in prosecuting frauds and other white-collar crimes.

Advisory opinions from bingo division. The bill would ensure that people in the bingo industry who needed information from the commission could obtain it in a timely manner. Sometimes when a licensee asks the commission for a rule or an interpretation, the commission takes a long time to answer the request or does not answer it at all. CSSB 270 would establish a process and deadlines for the commission to issue advisory opinions so that licensees could get answers and would know how to act within the law. The bingo director would be the appropriate entity to issue advisory opinions, since the director has specific knowledge and experience concerning bingo and could issue opinions in timely manner. Requiring the commission to issue the opinions could create delays, since the commission does not meet daily.

Director of bingo operations. By establishing a director of bingo operations in statute, CSSB 270 would clarify existing law, which has the bingo director report to the commission and not the commission's executive director.

OPPONENTS
SAY:

CSSB 270 would impose unnecessary burdens on organizations that conduct bingo and would give the commission too much oversight. Other provisions unwisely would move the state further from the original, voter-approved purposes of charitable bingo and could open up bingo to entities that should not be involved in the games.

Requiring license for “authorized organization employees.” By requiring state licensure of all people participating or assisting in bingo in any capacity, CSSB 270 would create an overly broad category of licensees that could result in anyone with even the remotest affiliation with bingo having to be licensed. For example, an accountant who gives advice to an organization on how to keep its books or a person who helps stuff envelopes relating to bingo might have to pay a fee and obtain a license. Current law requiring licensing of people who conduct bingo, lessors of bingo premises, and manufacturers and distributors of bingo equipment and supplies is adequate to regulate bingo. CSSB 270 could result in some 20,000 people having to obtain a license. The fee charged to these licensees would come from money that otherwise could be spent on charitable endeavors, and it could be a financial burden on many charities.

CSSB 270 would impose overly broad, undefined, and inappropriate requirements for these licensees. For example, the bill would require that licensees be of good moral character, which the bill would not define. It also would require that a person not have engaged in activities or practices that were detrimental to the best interests of the public, a concept so broad that it could be interpreted to include many innocuous actions and to discriminate against people.

The bill would impose overly harsh penalties associated with the new license. For example, the bill would require a license to be denied or revoked if a person incorrectly answered a question in the license application, something that could be as innocent as writing down a wrong address.

Commercial lessor licensing. By removing current restrictions on commercial lessor licenses, CSSB 270 could expand the number of commercial lessors. This could harm already existing lessors, many of whom are having trouble weathering the current downward trend in bingo revenues. If current commercial lessors go out of business, charities and their causes would be hurt.

Bingo proceeds and distributions. By deleting the list of approved purposes for the use of bingo proceeds, CSSB 270 could change fundamentally who could operate the games and how they could use the proceeds. The bill could result in any nonprofit that obtained an IRS designation as a 501(c)

organization operating bingo and using the proceeds in ways that never were intended by voters who approved charitable bingo.

Allowing the commission to establish the maximum amount that charities could have as operating capital without any statutory parameters for that amount could result in the commission setting the amount so low that charities could not weather the normal cyclical downturns in bingo. CSSB 270 should set these parameters, instead of leaving that to the commission, so that charities would be assured they could operate effectively.

Penalties and enforcement. CSSB 270 would increase some penalties associated with bingo so that they would be overly harsh. For example, failing to maintain proper records would carry a potential one-year jail term when the failure could involve something simple or insignificant. Diverting bingo proceeds would be increased from a Class A misdemeanor to a third-degree felony, skipping the punishment of a state-jail felony which would be more appropriate for a nonviolent offense.

By authorizing the commission to issue subpoenas and to compel attendance and testimony of witness, CSSB 270 would give the commission too much power with too much potential for abuse. Subpoena power is inappropriate for a state commission, given the fact that prosecutors must go to a court or a grand jury to have a subpoena issued. People issued subpoenas by the commission would have to go to court to challenge the subpoenas when they were never issued by the court originally.

Advisory opinions from bingo division. The advisory opinion process set up by CSSB 270 could result in some licensees trying to get advisory opinions for matters that would be handled more properly through the Administrative Procedures Act. Also, it is unclear what would occur if a licensee did not agree with an advisory opinion issued by the commission, since the opinion would not have been established through the traditional method of rulemaking. It is unclear what would constitute “conduct substantially consistent” with the opinion and who would make that assessment. The Lottery Commission, an official governing body — not the bingo director, a state bureaucrat — should issue the opinions.

Director of bingo operations. It is unnecessary to establish in statute the job

of director of bingo operations. Current law gives the Lottery Commission broad authority over all activities conducted under the bingo statues and requires the commission to establish separate divisions to oversee bingo and the lottery. The commission must employ an executive director, and the executive director must employ a director to oversee each division. These provisions are broad enough to regulate bingo adequately.

PROHIBITED GAMING

BACKGROUND: It is a defense to prosecution for gambling that a person plays for something of value other than money, using an electronic, electromechanical, or mechanical contrivance excluded from the definition of a gambling device. Penal Code, sec. 47.01 defines a gambling device as an electronic, electromechanical, or mechanical contrivance that, for a price, allow players an opportunity to obtain anything of value, with the award of the prize made solely or partially by chance, though accompanied by some skill. The definition includes gambling-device versions of bingo, keno, blackjack, lottery, roulette, video poker, or other machines.

Gambling devices do not include devices adapted solely for bona-fide amusement if players are rewarded exclusively with noncash merchandise prizes, toys, or novelties or something redeemable for one of those items, if they have a wholesale value in a single play of the game of up to 10 times the cost of playing the game once or \$5, whichever is less.

Under Occupations Code, sec. 2153.152, a person cannot engage in owning, buying, selling, or furnishing to another a music and skill or pleasure coin-operated machine without a license or registration certificate from the comptroller. An occupation tax of \$60 per year is imposed on each coin-operated machine. The comptroller has authority to seal a coin-operated machine to prevent its operation if the license or certificate of the person exhibiting the machine is suspended or revoked, the owner fails to pay the required tax, or the machine is not registered with the comptroller.

Under Government Code, sec. 466.024, the Lottery Commission must adopt rules prohibiting the operation of any game using a video lottery machine or machine. "Video lottery machine" or "machine" means any electronic video

game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including video poker, keno, and blackjack, using a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash, coins, or tokens, or that directly dispenses cash, coins, or tokens.

DIGEST:

CSSB 270 would authorize the comptroller to seal a prohibited gaming machine so that it could not be operated and to assess penalties of between \$500 and \$10,000 against a person who exhibited, displayed, or provided to another a prohibited gaming machine. The bill would define a prohibited gaming machine as a gambling device under Penal Code, sec. 47.01, that is possessed, used, exhibited, or displayed in a manner that violates that statute, or a device prohibited under the Government Code chapter dealing with the state lottery.

The bill would make certain criminal offenses relating to coin-operated machines punishable as Class A misdemeanors if the offense involved a prohibited gaming machine. This would apply to current criminal offenses established in the Occupations Code that make it an offense to break a seal attached to a coin-operated machine by the comptroller; exhibit or display a coin-operated machine with a broken seal without the comptroller's approval; remove a coin-operated machine from the location at which the comptroller attached a seal; break a seal attached in the name of a county or city; exhibit or display a coin-operated machine with a broken seal; and remove a coin-operated machine with a broken seal from its location.

CSSB 270 would allocate \$5 million from the state lottery account in each fiscal biennium to the comptroller to enforce these statutes against prohibited gaming machines. The bill also would allocate \$5 million in each fiscal biennium from the lottery to the criminal justice division of the Governor's Office to provide grants to help local governments prosecute offenses involving bingo, keno, blackjack, lottery, roulette, video poker, or other gambling devices.

The Lottery Commission would be given oversight of games of chance and machines or devices for conducting games of chance that were on bingo premises, locations that shared a common roof or common foundation with bingo premises, and locations within 150 feet of such common roofs or

common foundations. The oversight would include authority to conduct audits, inspections, and investigations.

The commission could not issue a license to a bingo operator to conduct bingo if the premises where the organization would conduct bingo was in a facility that shared a common roof or common foundation with a location where a gambling device, as defined by the Penal Code, was located or was within 150 feet of the common roof or common foundation of a facility with a gambling device.

The commission could not issue or renew a commercial lessor's license to a person whose location for bingo premises was in a facility that shared a common roof or common foundation with a location where a gambling device was operated or located or within 150 feet of the common roof or common foundation of such a location.

The lottery director would have to deny a license for an applicant and the commission would have to suspend or revoke a sales agent's license if the director or commission, respectively, found that the applicant or sales agent was a person whose location for a lottery sales agency shared a common roof or common foundation with a location where a gambling device was operated or located. License denial, suspension, or revocation also would occur if the sales agency was a location within 150 feet of the common roof or common foundation of a location where a gambling device was operated or located.

**SUPPORTERS
SAY:**

CSSB 270 would help stop the proliferation of illegal gambling machines, including eight-liners. By giving the comptroller authority to seal illegal gaming machines and establish penalties relating to breaking a comptroller's seal, the bill would establish state oversight and regulation of the machines, instead of relying solely on local law enforcement authorities.

A person who disagreed with the comptroller's decision to seal a machine could challenge the action. CSSB 270 would help in the fight against these machines by funneling money to the comptroller and the Governor's Office to combat the machines. These provisions would apply only to illegal gambling machines, not to any legal amusement machines.

CSSB 270 would add resources to the state's battle against illegal machines

by giving the commission oversight of games and machines of chance on or near bingo premises and by restricting the commission's ability to issue certain bingo and lottery licenses, if gambling devices were located or operated on the premises or nearby. These provisions would not affect a pure amusement machine, such as those using cranes to pick up fuzzy animals. The commission would not overstep its authority by going after grocery stores or other entities with pure amusement machines that were located near bingo premises or lottery sales agents, because the commission's authority would be limited to illegal machines.

**OPPONENTS
SAY:**

It would be inappropriate to give the comptroller regulatory authority over illegal gaming machines, which would be handled better by law enforcement agencies. The comptroller could determine wrongly that a legal machine was an illegal gambling machine, thereby unfairly penalizing the owner or operator of the machine.

Provisions in the bill that would restrict the commission's licensing authority if illegal gaming machines were nearby are too broad and inappropriate. They could lead to innocent bingo operators or lottery sales agents being penalized for other people's actions, or to penalties being imposed for the possession of perfectly legal machines.

NOTES:

The fiscal note for CSSB 270 projects a general revenue gain of \$100 million during fiscal 2004-05 and \$63.3 million each year thereafter from the state's participation in a multijurisdiction lottery game.

The committee substitute made many changes to the Senate engrossed version of SB 270, including adding provisions governing the sale of lottery promotional merchandise; the permissible location of lottery sales agencies; allocation of \$500,000 on a biennial basis to the comptroller for higher education grants; a multijurisdiction lottery; licensing of authorized organization employees, and illegal gambling machines.