

BILL ANALYSIS

Senate Research Center
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S.B. 405
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

S.B. 405 is the Lottery Commission Sunset Bill. The bill increases the Texas Lottery Commission's (commission) size from three to five public members. The bill requires the commission rather than the executive director to review and approve all major expenditures as well as develop a business plan. The bill requires the Bingo Advisory Committee to develop an annual work plan to more effectively advise the commission. The bill improves the commission's ability to effectively and consistently enforce bingo laws, by requiring the commission to adopt rules governing bingo compliance monitoring and enforcement procedures and expanding the commission's authority to temporarily suspend bingo licenses to prevent financial losses to the State.

As proposed, S.B. 405 continues the Texas Lottery Commission for another 12 years.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Lottery Commission in SECTION 3 (Section 466.1005, Government Code), SECTION 12 (Section 467.112, Government Code) SECTION 13 (Section 2001.0555, Occupations Code), SECTION 16 (Section 2001.3015, Occupations Code), SECTION 18 (Section 2001.351, Occupations Code), SECTION 19 (Section 2001.353, Occupations Code), SECTION 20 (Section 2001.355, Occupations Code), and SECTION 21 (Sections 2001.358, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 466.014, Government Code, by adding Subsection (d), to require a contract between the lottery division (division) and a lottery operator under Subsection (b) to contain a provision allowing the contract to be terminated without penalty if the division is abolished.

SECTION 2. Amends Subchapter B, Chapter 466, Government Code, by adding Section 466.027, as follows:

Sec. 466.027. COMPREHENSIVE BUSINESS PLAN. Requires the Texas Lottery Commission (commission) to develop a comprehensive business plan to guide the commission's major initiatives. Sets forth the specific minimum requirements for the plan relating to commission programs and projects. Requires the commission at least annually to review the plan to assess the overall performance and value of each program and project.

SECTION 3. Amends Subchapter C, Chapter 466, Government Code, by adding Section 466.1005, to read as follows:

Sec. 466.1005. PROCUREMENTS. Authorizes the commission to take certain actions necessary to carry out this chapter. Requires the commission to review and approve all major procurements as provided by commission rule. Requires the commission, by rule, to establish a procedure to determine what constitutes a major procurement based on the cumulative value of a contract and other relevant factors. Authorizes the commission to delegate to the executive director of the commission (executive director) the authority to approve procurements other than major procurements.

SECTION 4. Amends Sections 466.101(a) and (b), Government Code, to provide that the commission and executive director jointly, rather than the executive director solely, are authorized or required to take certain actions.

SECTION 5. Amends Section 467.002, Government Code, as follows:

Sec. 467.002. APPLICATION OF SUNSET ACT. Provides that the commission is subject to Chapter 325 (Texas Sunset Act), and unless continued in existence as provided by that chapter, is abolished and this chapter, Chapter 466, and Chapter 2001, Occupations Code, expire September 1, 2017. Deletes existing text relating to a review by the Sunset Advisory Commission. Makes conforming changes.

SECTION 6. Amends Sections 467.021(a) and (b), Government Code, to provide that the commission is comprised of five members, rather than three members. Requires appointments to the commission be made without regard to the color, disability, sex, religion, age, or national origin of the appointees. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Section 467.022, Government Code, to provide that the terms of one or two commission members expire February 1 of each odd-numbered year.

SECTION 8. Amends Section 467.024, Government Code, by adding Subsections (c) and (d), as follows:

(c) Prohibits a person from being a commission employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for the purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U. S. C. Section 201 et seq.), under certain conditions.

(d) Prohibits a person from acting as general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 (Registration Of Lobbyists) because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

SECTION 9. Amends Subchapter B, Chapter 467, Government Code, by adding Section 467.0255, as follows:

Sec. 467.0255. TRAINING. Prohibits a person who is appointed and qualifies for office as a member of the commission from performing certain actions until they have completed a training program. Requires the training program to provide the person with specific information relating to the functions, rules, laws, and ethical policies of the commission. Provides that a person appointed to the commission is entitled to reimbursement for expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 10. Amends Sections 467.026(a) and (c), Government Code, as follows:

(a) Provides that it is grounds for removal from the commission that a member does not meet certain criteria required by Sections 467.023 and 467.024 at the time of taking office, rather than appointment.

(c) Requires the executive director, if the executive director has knowledge that a potential ground for removal exists, to notify the presiding officer of the commission of the potential ground. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the commission, who then shall notify the governor and attorney general that a potential ground for removal exists. Makes conforming changes.

SECTION 11. Amends Subchapter B, Chapter 467, Government Code, by adding Section 467.037, as follows:

Sec. 467.037. DIVISION OF RESPONSIBILITIES. Requires the commission to develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

SECTION 12. Amends Subchapter C, Chapter 467, Government Code, by adding Sections 467.109-467.113, to read as follows:

Sec. 467.109. TECHNOLOGY POLICY. Requires the commission to implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. Requires the policy ensure that the public is able to interact with the commission on the Internet.

Sec. 467.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. Requires the commission to develop and implement a policy to encourage the use of certain rulemaking and alternative dispute resolution procedures. Requires the alternative dispute resolution procedures to conform to specific guidelines. Requires the commission to designate a trained person to perform certain duties relating to implementation, training, and effectiveness evaluation of said procedures.

Sec. 467.111. PUBLIC PARTICIPATION. Requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission to speak on any issue under the jurisdiction of the commission.

Sec. 467.112. COMPLAINTS. Requires the commission to maintain a system to promptly and efficiently act on complaints filed with the commission and to take certain actions relating to the investigation, resolution, and disposition of the complaint. Requires the commission by rule to require an investigation related to a complaint filed with the commission to be completed within a reasonable time frame.

Sec. 467.113. CONSUMER INFORMATION AND PROTECTION. Requires the commission to identify applicable laws governing consumer information and protection and adopt policies to ensure that the commission complies with those laws.

SECTION 13. Amends Subchapter B, Chapter 2001, Occupations Code, by adding Section 2001.0555, to read as follows:

Sec. 2001.0555. COMPLIANCE MONITORING. Requires the commission to adopt rules to govern the commission's monitoring of a license holder to determine if the license holder is in compliance with this chapter or rules adopted by this chapter. Requires the rules, at a minimum, to address audits and inspections and other compliance and enforcement activities.

SECTION 14. Amends Section 2001.057, Occupations Code, by adding Subsections (h) and (i) to read as follows:

(h) Requires the bingo advisory committee (committee) to annually develop a work plan detailing the committee's objectives and the issues to be addressed by the committee during that year. Sets forth specific issues and trends to be addressed by the plan.

(i) Requires the committee to perform a review at the end of each year to accomplish certain objectives.

SECTION 15. Amends Section 2001.101, Occupations Code, to authorize the commission to license a person to conduct bingo if the person has been in existence for the time required by commission rule to ensure the continuity and bona fide nature of the organization. Deletes existing text requiring various entities to have been in existence for specified lengths of time. Makes conforming and nonsubstantive changes.

SECTION 16. Amends Subchapter G, Chapter 2001, Occupations Code, by adding Section 2001.3015, as follows:

Sec. 2001.3015. LICENSING RULES. Requires the commission, by rule, to establish comprehensive qualifications for a person to be licensed or the person's license to be renewed under this chapter, develop a standard renewal process, and establish standards of conduct for a person licensed under this chapter.

SECTION 17. Amends the heading to Subchapter H, Chapter 2001, Occupations Code, to read as follows:

SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINE OF LICENSE HOLDERS.

SECTION 18. Amends Section 2001.351, Occupations Code, as follows:

Sec. 2001.351. DENIAL OF LICENSE. (a) Creates this subsection from existing text.

(b) Requires the commission, in making the determination whether to renew a license, to consider the compliance history of a license holder. Requires the commission to adopt rules to govern the specific areas of compliance history that may be considered in the renewal determination.

(c) Authorizes the commission, after the opportunity for a hearing, to deny an application for renewal of a license if the applicant's compliance history reveals conduct that is inconsistent with this chapter or the commission's rules adopted under this chapter in the specific areas considered by the commission in accordance with the rules adopted under Subsection (b).

SECTION 19. Amends Section 2001.353, Occupations Code, to read as follows:

Sec. 2001.353. New heading: DISCIPLINE OF LICENSE HOLDERS. (a) Creates this subsection from existing text. Requires, rather than authorizes, the commission, after a hearing, to suspend, revoke, or refuse to renew a license issued under this chapter or reprimand the license holder for certain actions.

(b) Authorizes the commission to place on probation a person whose license is suspended. Authorizes the commission, if the license suspension is probated, to require the person to take certain actions.

(c) Requires the commission by rule to adopt written guidelines to ensure that a probation is administered consistently, and develop a system to track compliance with the probation requirements.

SECTION 20. Amends Section 2001.355, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires the director of bingo operations, before temporarily suspending a license, to follow any prehearing rules adopted by the commission to determine if the license holder's continued operation may constitute a financial loss to this state, which includes a license holder's failure to remit taxes under Section 2001.501 (Gross Rentals Tax), Occupations Code or prize fee payments under Section 2001.502 (Prize Fee), Occupations Code to the commission as required by those sections.

(d) Requires the commission to adopt rules to govern the temporary suspension of a license under this section.

SECTION 21. Amends Subchapter H, Chapter 2001, Occupations Code, by adding Section 2001.358, as follows:

Sec. 2001.358. SCHEDULE OF SANCTIONS; TIMELINE. Requires the commission, by rule, to adopt a schedule of sanctions that defines and summarizes violations of this

chapter or commission rules adopted under this chapter to ensure that sanctions imposed are appropriate to the violation. Sets forth requirements for the schedule. Requires the commission, by rule, to establish a timeline for resolution of a violation of this chapter or commission rules adopted under this chapter. Requires the rules to include certain elements.

SECTION 22. Amends Section 2001.407(a), Occupations Code, to delete existing text relating to an exception provided by Section 2001.257(b) (Powers Of System Service Provider), Occupations Code.

SECTION 23. Amends Section 2001.459(a), Occupations Code, to delete a provision requiring a payment for services provided by a system service provider be paid from an organization's bingo account.

SECTION 24. Amends Section 2001.553(a), Occupations Code, to delete existing text providing that a person commits an offense if a person sells or attempts to induce the sale of automated bingo services. Makes conforming and nonsubstantive changes.

SECTION 25. Repealer: Section 466.003, (Application of Sunset Act), Government Code; Sections 2001.002(3) (Definitions), 2001.057(b) (Bingo Advisory Committee), 2001.553(b) (Unlicensed Sales; Offense), Occupations Code, and Subchapter F, Chapter 2001 (System Service Provider License), Occupations Code.

SECTION 26. Requires the Texas Lottery Commission, not later than March 1, 2006, to adopt all rules, plans, policies, and schedules as required by specific sections of this Act.

SECTION 27. Makes application of this Act prospective. Requires the governor, promptly after this Act takes effect, to appoint two additional members, one with a term expiring February 1, 2009, and one with a term expiring February 1, 2011, to the Texas Lottery Commission.

SECTION 28. Effective date: September 1, 2005.