

BILL ANALYSIS

C.S.H.B. 2197

By: Anchia

Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Lottery Commission was created in 1993 by the 73rd Legislature to administer the state lottery and regulate charitable bingo activities. The Commission's mission is to generate revenue for the State, primarily for education, through the responsible management and sale of lottery products, and to regulate charitable bingo in the state. The Commission is subject to the Sunset Act and will be abolished on September 1, 2013, unless continued by the Legislature. As a result of its review of the Commission, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Lottery Commission in SECTIONS 3, 14, 15, 16, 23, 26, 28-29, 31, 33-34, 36-37, and 40 of this bill.

ANALYSIS

Continuation of the Lottery Commission

The bill continues the Commission for 12 years and repeals an outdated Sunset clause related to a past Sunset review of the Lottery Division. The bill also relocates in statute an existing provision that requires the lottery operator contract to terminate if the Lottery Division is abolished.

Size and responsibilities of the Lottery Commission

The bill increases the size of the Commission from three to five members, and directs the Governor to appoint two additional members as soon as practicable after the bill's effective date according to specified staggered terms. The bill also provides clear procurement authority to the Commission and requires it to approve major procurements and to determine in rule what is a major procurement. The bill allows the Commission to delegate to the Executive Director the authority to approve procurements that are not major. The bill adds the Commission to existing authority in law to establish purchasing procedures and make decisions. The bill also specifies applicability of these changes to procurements or contracts after the effective date of the bill.

Comprehensive business plan

The bill requires the Commission to develop a comprehensive business plan, including specific agency goals and evaluations of effectiveness, efficiency, and performance, by September 1, 2014. The bill provides for the periodic review of the plan and at least an annual public meeting to discuss the plan.

Administrative hearings

The bill clarifies in both the State Lottery Act and the Bingo Enabling Act that the Commission's disciplinary hearings are to be conducted by the State Office of Administrative Hearings.

Standard Sunset Across-the-Board recommendations

The bill adds language making a regulated person in the field of lottery or bingo ineligible from being appointed to the Commission. C.S.H.B. 2197 adds standard Sunset language prohibiting a person from serving as a high-level agency employee if the person, or their spouse, is an officer, employee, or paid consultant of a Texas trade association in the field of bingo or lottery, and prohibiting a person from acting as the agency's general counsel if the person is registered as a lobbyist on behalf of a profession related to the operation of the agency. The bill also specifies that changes in prohibitions or qualifications do not apply to current Commission members but do apply to members appointed after the effective date of the bill.

The bill adds standard Sunset language requiring members of the Commission to complete training before assuming their duties and specifies elements of the training program. The bill also amends existing law regarding grounds for removing a Commission member to reflect the qualifications and eligibility requirements added in the bill and to reflect standard procedural aspects for the removal authority. The bill adds standard Sunset language requiring the Commission to adopt policies to separate policymaking duties from the agency's management functions. The bill adds standard Sunset language requiring the Commission to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution, and requiring the Commission to implement policies to give the public a reasonable opportunity to present issues under the agency's jurisdiction. C.S.H.B. 2197 also adds standard Sunset language requiring the agency to maintain information on all complaints and to make information available to the public about complaint procedures, and to notify complaint parties of the status of complaints. The bill changes language specifying that the Governor's appointments to the Commission shall be made without regard to certain non-discriminatory characteristics instead of existing language for the Governor to strive to achieve certain representation.

Complaints

The bill requires the Commission to develop procedures for the entire complaint process regarding both bingo and lottery licensees, including an analysis to identify trends or issues relating to violations and provisions for reporting on and addressing the trends and issues. The procedures and any changes in complaint investigation would apply only to complaints received after the effective date of the bill.

Use of criminal history record information in bingo regulation

The bill requires the Commission to use criminal history record information in bingo regulation according to established standards in the Occupations Code for relating the criminal activity directly to the duties and responsibilities of the regulated occupation. The bill removes references throughout the Bingo Enabling Act to convictions for felonies and crimes of moral turpitude that may conflict with the established standards for regulatory agencies to address the criminal history of persons they regulate. The bill also repeals the definition of crime of moral turpitude.

Standard bingo license renewal

The bill requires the Commission to establish a standard renewal process for bingo licensees requiring license holders to submit to the agency the information required for initial licensure. The bill removes language allowing a bingo conductor or lessor with a two-year license to pay the fee annually. The bill also removes language requiring bingo equipment manufacturers and distributors to pay a \$1,000 fee in addition to the required renewal fee to obtain a two-year license.

Enforcement of bingo regulation

C.S.H.B. 2197 clarifies the Commission's authority to refuse to renew a license and clarifies that bingo registrations are subject to the agency's disciplinary authority. The bill authorizes the

Commission to place on probation a person whose license or registration is suspended and provides conditions of probation and requirements for the Commission's consistent administration. The bill expands the Commission's authority to temporarily suspend a bingo license to prevent financial loss to the State. The bill requires the Commission to amend its current penalty schedule to include a full range of sanctions to ensure that sanctions imposed are appropriate to the violation, and it also specifies certain requirements for the schedule.

Bingo licensing fees

The bill removes from statute the fixed fees for bingo equipment manufacturers and distributors and provides for the Commission to set both fees in an amount reasonable to defray administrative costs. The bill removes the \$10 fee for bingo license amendments and provides for the Commission to establish an amendment fee schedule for charging fees based on the complexity of the amendment. C.S.H.B. 2197 authorizes the Commission to charge a fee for initial registration and renewal to cover costs, including criminal history background checks and other administrative costs, associated with adding bingo hall workers to the Registry of Approved Bingo Workers.

Bingo inspections and audits

C.S.H.B. 2197 requires the Commission to develop in rule and use policies and procedures for prioritizing bingo inspections according to risk and specifies risk factors to be considered. The bill also requires the Commission to develop a policy for auditing bingo licensees. The bill requires the Bingo Division to use the Commission's risk analysis to annually identify license holders most at risk of violating the law or agency rules and to develop a plan for auditing these identified license holders that includes scheduling audits at least every five years after the license holder is identified as a candidate for an audit. The bill also requires the Bingo Division to provide a copy of the auditing plan to the Commission.

Reporting requirement

The bill eliminates the Commission's report on lottery tickets sold and prizes awarded.

Adoption of rules, policies, and procedures

The bill directs the Commission to adopt all rules, policies, and procedures required by changes in law made by the bill not later than January 1, 2014.

Applicability of changes affecting license eligibility

The bill provides that changes governing eligibility for either a lottery or bingo license apply only to the issuance or renewal of a license on or after the effective date of the bill. The bill specifies that a license issued before the effective date is governed by the applicable laws in effect when the license was issued or renewed until the license expires or is renewed under the provisions of the bill.

The bill repeals the following statutory provisions.

Government Code Section 466.003

Government Code Section 466.025

Occupations Code Section 2001.002(8-a)

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2197 differs from the original only by amending the caption.