

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:44 a.m. on Thursday, February 10, 2005, in Room 231-N of the Capitol.

All members were present except:
Senator James Barnett (E)

Committee staff present:
Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Margie Phelps, Director of Offender Reentry and Release Planning, Kansas Department of Corrections
Senator John Vratil
Glenn O. Thompson, Stand Up for Kansas

Others attending:
See attached list.

Chairman Brungardt reviewed next week's schedule for hearings and presentations. He also called the Committee's attention to copies of Fiscal Notes distributed covering **SB 110**, **SB 109**, and **SB 153**. (Attachment 1)

Chairman Brungardt welcomed Margie Phelps, Kansas Department of Corrections (KDOC), to give a presentation on statewide offender reentry initiatives.

Ms. Phelps talked to the Committee about a critical public and community safety issue in Kansas which are offenders who complete their time in prison and then return to Kansas communities, the manner in which that transition occurs and how it is handled. She explained that approximately 630,000 individuals leave prison each year in the United States and return to local communities. In Kansas last year, approximately 5,800 left our state prisons. She said 20-25 % are without supervision and don't report to a parole officer, at least 33% are homeless or lack housing, at least 50% do not have the skills or lack solid job history to have gainful employment and keep the jobs, at least 20% have mental health needs with half being severe or persistent, at least two-thirds have substance addiction and/or use history, and at least 33% lack pro-social or have health positive support systems when they return to their communities. (Attachment 2)

Ms. Phelps' detailed handouts contained statistics, charts, and information on where the released offenders go to live, including sex offenders. She stated that 65% of the released offenders that are supervised go to Sedgwick, Shawnee, Wyandotte and Johnson Counties, 25% will release to other in-state counties, 20% are released with a full discharge, and 10% will be released to other states. Her handouts included separate sections on the top four counties and their respective re-entry programs. (Attachment 3)

Ms. Phelps described what the released offenders looked like, i.e. 93% are male, 7% are female, 65% are white, 30% are black, and 5% are other, two-thirds of the females have children; and about half the males have children. The criminal offense profiles are 28% non-sex-person crimes (homicide, battery), 25% property crimes (theft, burglary), 22% drug crimes (possession, sale), 20% sex crimes (rape, indecent liberties, and 5% other (escape from custody, false writing). She spoke on Community Offender Re-entry Pathways (COR-Pathways) for Transitional Planning for Offenders with Mental Illness implemented in June of 2002 as a result of a partnership between the KDOC and the Department of Social and Rehabilitative Services (SRS). She explained that this programs is for special needs offenders that are those with severe and persistent mental illnesses, developmental disabilities, and physical disabilities, and those over age 60 with age-related needs. (Attachment 4) Ms. Phelps also furnished handouts on KDOC's Offender Job Preparedness Initiatives. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:44 a.m. on Thursday, February 10, 2005, in Room 231-N of the Capitol.

Hearings and discussion on:

SB 109 - Gaming compacts; relating to the procedure for the approval thereof

SB 153 - State-tribal gaming compacts; procedure for approval when legislature not in session

Chairman Brungardt announced that the two bills set for hearing in today's meetings would be open for discussion and explanation since the bills were each offered by two members of the Committee and dealt with the same subject matter. He related this concerned tribal compacts that are to be addressed when the Legislature is not in session or during the interim time frame. Chairman Brungardt explained that one member basically suggested that the compacts could only be addressed by Tribal Relations and then approved by LCC in the Legislature's absence. The other member's bill suggested that an emergency would have to be declared, and a special session called for anything to be handled during the interim. The Chairman suggested the Committee have discussion or statement of feelings in order to develop a consensus on how the Committee wanted to handle the subject. He asked the authors of the two bills to make short statements, explain their thinking, and give reasons why the Committee should proceed accordingly with their respective bills.

Senator Vratil explained that he asked for **SB 109** be drafted and introduced because of the situation that occurred this past fall of 2004. It was sometime in the early fall the Governor announced that she had reached an agreement with some of the tribes on a gaming compact. The Governor said she intended to use the existing provisions of Kansas statutory law to submit the compact first to the Joint Committee on State Tribal Relations and then to the Legislative Coordinating Council (LCC). He explained that current law allows those two bodies to consider and approve an Indian Gaming Compact if the Legislature is not in session. He expressed his concern about that approach because it was his understanding when the Legislature passed those statutes authorizing that procedure, the Legislature intended it to be invoked only in the event of an emergency. He stated he had heard from a number of Legislators who were in the Legislature when those statutes were adopted, and they all seem to agree it was for emergency situations.

Senator Vratil explained that he wrote a letter to the Governor asking for her response and to identify the emergency. The Governor wrote back and correctly pointed out that existing law does not require an emergency to exist; therefore, she was just exercising her rights under the law. When it became apparent to him that there was no requirement in the statute that an emergency exist in order for the LCC to take action on the Indian Gaming Compact, he decided to draft this bill. **SB 109** defines an emergency, and it defines it as "an emergency exists when unforeseeable circumstances exist which compel action be taken on the proposed compact before the legislature next convenes in regular session." Senator Vratil explained that **SB 109** would require the Joint Committee on State Tribal Relations to determine that an emergency exists in order to move the proposed compact forward, and also require the LCC to determine that an emergency exists in order to move the proposed compact forward. He reiterated that the language states, not just implies, that there must be unforeseen and compelling circumstances which require approval of the compact before the Legislature comes back into session.

Senator Brownlee explained that her bill, **SB 153**, would eliminate the concerns expressed last fall on the LCC approving Indian compacts for casinos. She said that **SB 153** would require the full Legislature, rather than the LCC, to approve compacts. Senator Brownlee added that in the unlikely event a need arises for the Legislature to approve a compact when the Legislature is not in session, the bill authorizes the Governor the authority to call the Legislature into a special session to consider the compact. She stated she was concerned about trying to define an emergency as stipulated in **SB 109**.

Chairman Brungardt offered that the intent was the same by giving a little less flexibility to the Executive Branch and to the LCC. He said no one had good concrete examples of what kind of situations might come up so it was difficult to say if one was too restrictive or not.

Senator Vratil said his concern with doing this only during a special session of the Legislature was that when a special session is called, the subjects or the bills the Legislature considers in the special session cannot be restricted during that session. A special session could not be called to just consider a compact, because anybody in the Legislature could bring up any other topic or any other bill they wanted to bring up during that session. He added that historically, that was why there has been reluctance to call special sessions.

CONTINUATION SHEET

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Committee discussion centered around the two years that Senate Rules, House Rules and Joint Rules are in effect. Senator Hensley shared that in 1989, then Governor Hayden called a special session to discuss the highway decision, and that there were attempts to bring up other issues. The Constitution does not limit the subject matter brought up during a special session.

Senator O'Connor asked for clarification of the wording, "unforeseeable event". Senator Vratil said he thought it would be relatively rare that an emergency could exist. He said hypothetically, it would be where an Indian tribe and the Governor negotiated a gaming compact, and the intent was to locate it on a certain 80 acre tract of land in Wyandotte County, Kansas. The tribe thought they had the right to purchase that land and get well down the road, and the owner of that land tells the tribe if they don't commit to purchase the land within 30 days he would sell it to someone else. He explained that would be an unforeseeable circumstance that could compel action to call the full Legislature to come back into session. So it is left up to the Joint Committee and the LCC to determine whether that actually was an emergency to have some flexibility within the law.

Chairman Brungardt stated that it really comes down to those two groups ending up making policy or having to bring the whole legislative body back in for a special session to make the same policy or not make it. He said he wanted the Committee to have time to study both bills and their similarity, then decide what to do on the subject matter choosing which bill to work as they are redundant.

Senator Hensley commented that in the most recent example of this situation, it was the members of the LCC that decided that they should not take action since it was so close to a legislative session, and that the LCC should wait for the full body to meet and decide.

Glenn Thompson, Executive Director, on behalf of Stand Up for Kansas, appeared in support of **SB 153**. He said the purpose of this bill was to establish a process for the Legislature, rather than the LCC, to consider proposed Indian gaming compacts when the Legislature is not in session. He shared with the Committee a brief summary of background information that led to enactment of K.S.A. 46-2302, which provides the LCC the authority to ratify an Indian gaming compact when the legislature is not in session.

Mr. Thompson related that in October 1988, Congress enacted the Indian Gaming Act (IGRA) which provides that if Class III gaming is conducted in a state and if an Indian tribe desires to operate a Class III casino on Indian land acquired prior to the enactment of IGRA in the state, the act requires the tribe to negotiate a compact with the state for operation of the casino. The act states that if the state fails to conduct negotiations with 180 days, the tribe may initiate a cause of action against the state. With the U.S. Supreme Courts March 27, 1996, ruling that a tribe cannot sue a state for cause of action under IGRA without the state's consent voids the 180 days required for states to take action.

Mr. Thompson stated the need for the bill was because it is a major policy decision affecting citizens and business through the state. Also, he said there is no longer an existing need for the LCC to serve as a backup ratification body for compacts with the four Kansas tribes, and assigning the LCC authority to ratify Indian gaming compacts may not be constitutional and probably would not withstand a court challenge. He concluded that the statute which specifies for the Legislature to ratify Indian gaming compacts contains a serious deficiency, and that **SB 153** would correct the deficiency. (Attachment 6)

Chairman Brungardt expressed the Committee's appreciation to Mr. Thompson and the information he provided.

The meeting was adjourned at 11:15 a.m. The next meeting is scheduled for February 15, 2005, at 10:30 a.m.