

2009 SENATE JUDICIARY

SB 2043

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2043

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 13, 2009

Recorder Job Number: 6908

Committee Clerk Signature

Katrina Mickelson

Minutes:

Senator Nething opened the hearing on SB 2043, relating to the racing commission and the authority of the attorney general. All members of the committee were present.

Representative Lawrence Klemin, District 47, introduced the bill.

Vonnett Richter explained the bill (see attached testimony #1).

Tom Trenbeth, Chief Deputy of the Attorney General, was opposed to the bill. I have copies of the Attorney General's statement for the 2005 session on SB 2340 (see attached testimony #2). I have a proposed amendment to SB 2043 (see attachment #3).

Winston Satron, member of the racing commission, we are not in opposition of being placed under the Attorney General's office. I think it would be helpful to have an oversight agency to guide the racing director.

Senator Nething closed the hearing on SB 2043.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2043

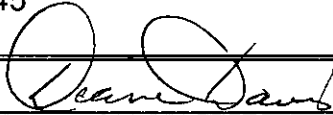
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/26/09

Recorder Job Number: 7745

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee Work

Discussion on the proposed amendments. Senator Nething mentions that the current racing commission has some changes in personnel and members of the commission. They would like to get along with everybody. If the Attorney General doesn't want it then why put it there.

Senator Olafson moves do pass on the amendment, seconded by Senator Nelson.

Senator Olafson says that if the bill were to pass then the Attorney General would have more control with this amendment.

Verbal pass on the amendment, all yes

Senator Olafson moves do not pass as amended, seconded by Senator Nelson

Discussion continues on the commission wanting over-sight.

Vote 6 yes, 0 no

Senator Olafson will carry

FISCAL NOTE
Requested by Legislative Council
12/08/2008

Bill/Resolution No.: SB 2043

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers the Racing Commission to the Office of Attorney General.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Racing Commission expenditures will increase the Office of Attorney General's expenditures if this bill is passed.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Racing Commission's budget needs to be transferred into the Office of Attorney General's appropriation bill.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	12/31/2008

PROPOSED AMENDMENTS TO SENATE BILL NO. 2043

Page 1, line 1, replace the first "section" with "sections" and after "53-06.2-02" insert "and 53-06.2-03"

Page 1, line 2, after "commission" insert ", appointment of the director,"

Page 2, after line 22, insert:

"SECTION 2. AMENDMENT. Section 53-06.2-03 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-03. Director of racing - Appointment - Qualifications - Salary - Duties - Other personnel.

1. The ~~commission~~ attorney general shall appoint a director of racing. The ~~commission~~ attorney general shall establish the director's qualifications and salary.
2. The director shall devote such time to the duties of the office as the ~~commission~~ attorney general may prescribe. The director is the executive officer of the commission and shall enforce the rules and orders of the commission. The director shall perform other duties prescribed by the ~~commission~~ attorney general.
3. The director may employ other persons as authorized by the ~~commission~~ attorney general."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2043: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2043 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the first "section" with "sections" and after "53-06.2-02" insert "and 53-06.2-03"

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2. The director shall devote such time to the duties of the office as the ~~commission~~ attorney general may prescribe. The director is the executive officer of the commission and shall enforce the rules and orders of the commission. The director shall perform other duties prescribed by the ~~commission-prescribes~~ attorney general.
3. The director may employ other ~~persons~~ individuals as authorized by the ~~commission~~ attorney general."

Renumber accordingly

2009 TESTIMONY

SB 2043

**EXCERPT FROM 2009 LEGISLATIVE COUNCIL REPORT
INTERIM JUDICIARY COMMITTEE
SENATE BILL NO. 2043**

FORMATION OF A STATE GAMING COMMISSION STUDY

The committee was assigned Senate Concurrent Resolution No. 4011, which directed a study of the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota. The legislative history regarding this resolution indicated that as a way to deal with all the various types of gaming authorized by the state, a single gaming commission may provide for consistency and accountability.

Background

Under NDCC Chapters 53-06.1 (Games of Chance) and 53-06.2 (Parimutuel Horse Racing) certain charitable organizations are permitted to conduct a limited array of games of chance and horseracing events. North Dakota Century Code Chapter 53-12.1 provides for the participation of North Dakota in a multi-state lottery.

The State's Gaming Commissions

Gaming Commission

Since the 1977 law that authorized charitable gaming in the states, the responsibility for enforcement of the charitable gaming law has been shared by the Attorney General and local officials. In 1991 the Legislative Assembly passed legislation that provided for the Gaming Commission to have an increased role in charitable gaming enforcement. Enforcement attention has been directed both at preventing crimes and at ensuring compliance with the many requirements of the law. The Gaming Commission has adopted extensive rules governing accounting procedure and auditing methods to increase opportunities to prevent and detect cheating by players or gaming personnel.

In 1991 a State Gaming Commission was created consisting of a chairman and four other members appointed by the Governor with the consent of the Senate. Under the 1991 legislation, the Gaming Commission would share authority with the Attorney General to impose fines on organizations, distributors, and manufacturers who violate any provisions of law or rule and to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of any provision of law or rule. In 1993, however, the sole authority to impose fines and to suspend or revoke licenses was returned to the Attorney General. The commission is given full authority for adoption of rules to implement the charitable gaming laws.

Since 1985, the Gaming Advisory Board has provided guidance and assistance to the Gaming Commission and Attorney General on regulatory policy issues, the revision of the

gaming rules, and on recommended law changes. The Gaming Advisory Board meets about three times a year as needed. Members serve on a voluntary basis and are not reimbursed for expenses.

Racing Commission

The Racing Commission was established and parimutuel horse racing authorized by the 1987 Legislative Assembly. Initially, the Racing Commission was established in the office of the Secretary of State. Members of the commission originally were the Secretary of State and four other members appointed by the Governor. The 1989 Legislative Assembly moved the Racing Commission from the Secretary of State's office to the office of Attorney General. The Secretary of State was removed as chairman of the commission and one other member was added appointed by the Governor. The 1989 legislation also established the breeders' fund and purse fund and authorized off-track wagering on races to be held at licensed racecourses either in state or out of state. The 1991 Legislative Assembly created the promotion fund and provided that unclaimed tickets and breakage from each live race and simulcast program be deposited in the promotion fund. This legislation also provided that the moneys in the breeders' fund, purse fund, and promotion fund may be spent by the commission pursuant to a continuing appropriation.

The 1991 Legislative Assembly also enacted legislation that provided that of the Governor's five appointees, one must be nominated by the state chapter or affiliate of the American Quarter Horse Racing Association, one by the state chapter or affiliate of the United States Trotting Association, one nominated by the state chapter or affiliate of the International Arabian Horse Association, and one nominated by the state chapter or affiliate of the North Dakota Thoroughbred Association. In 1993 the Legislative Assembly approved simulcast dog racing in the state.

The 2001 Legislative Assembly authorized parimutuel wagering to be conducted through account wagering and that an account wager may be made on an account only through a licensed simulcast services provider authorized to operate the simulcast parimutuel wagering system under the certificate system.

In 2005 the Legislative Assembly passed two bills relating to the Racing Commission. The first provided that a member of the Racing Commission who is appointed to fill a vacancy arising from other than the natural expiration of a term who serves the unexpired portion of the term may be reappointed. The second removed the Racing Commission from the Attorney General's

office. The bill authorized the Attorney General to request payment for any services the Attorney General renders to the Racing Commission.

Lottery Advisory Commission

The North Dakota Lottery and the Lottery Advisory Commission were established in 2003. The Lottery Advisory Commission is composed of five members, three of whom are legislators selected by the chairman of the Legislative Council and two of whom are selected by the Attorney General. The commission is required to meet at least once a quarter and any additional meetings as the chairman of the commission deems necessary. The commission advises the lottery director and the Attorney General on policy and general operation of the lottery. The commission also serves as the audit committee.

The Attorney General and Director of the North Dakota Lottery consult with the Lottery Advisory Commission on substantive policies, plans, issues, contracts, timelines, and activities of the Lottery, including selecting retailers, proposing new games, hiring a lottery director, proposing laws and rules, drafting legislative reports, proposing surveys or studies, proposing advertising, marketing, promotional, and educational campaigns, and proposing policies on monetary fines, license suspensions and revocations.

Summary of Neighboring States' Gaming Commission Structure

South Dakota

The South Dakota Lottery Commission is a seven-member board appointed by the Governor which establishes policy for and advises the lottery director on the operation of the South Dakota Lottery. Any major procurement of the lottery requires the approval of the commission. Members are appointed by the Governor and confirmed by the Senate. Each commissioner's term is three years.

Other gaming in South Dakota, which includes the slot machines and table games conducted at Deadwood and the state's pari-mutuel racing, is regulated by the South Dakota Gaming Commission. The South Dakota Gaming Commission consists of five members appointed by the Governor. Each commissioner's term is three years. Members may not serve more than two consecutive full terms.

Minnesota

In Minnesota, the Gaming Control Board adopts rules for the conduct of charitable gambling, approves all gambling equipment for use, issues licenses, provides training and education to organizations, conducts compliance reviews and site inspections, and imposes penalties for violations. The board has delegated to its director the power to issue or deny licenses and

permits under board guidelines. The board receives the financial reports of licensed organizations and verifies gross receipts, prize payouts, expenses, and expenditures of net profits for lawful purposes. The board may investigate alleged violations of law or rule, issue consent orders, and impose civil penalties.

The Minnesota Racing Commission regulates horse racing and card playing in Minnesota.

The Minnesota State Lottery is operated under the control of a director appointed by the Governor with the advice and consent of the Senate. The Minnesota State Lottery does not have a regulatory commission or board. The 2004 Minnesota Legislature created the Lottery Organizational Task Force to study the organization and profitability of the state lottery. The January 10, 2005, final report of the task force recommended the establishment of a board to oversee the activities of the Minnesota State Lottery. A bill introduced in the 2005 Minnesota Legislative Session, which would have established a state lottery board, failed to pass.

Montana

The Gambling Control Division of the Montana Department of Justice regulates all forms of gambling in Montana other than the Montana Lottery and horse racing. The Gaming Advisory Council, created in 1989, advises the Department of Justice and other state agencies on public policy matters related to gaming, including amendments to the gambling statutes; additional or modified departmental rules; clarification of existing rules; and operation of the Gambling Control Division.

The Montana Lottery Commission, which is a five-member board appointed by the Governor, sets policies for the operation of the Montana Lottery. The members are appointed to a four-year term.

The Board of Horse Racing, which is a division of the Montana Department of Livestock, is responsible for regulating the live and simulcast horse racing industry and ensuring compliance by the approximately 3,500 licensees with state laws and board rules.

TESTIMONY AND COMMITTEE CONSIDERATIONS

The committee received testimony and information from Gaming Division of the Attorney General's office, members of the State Gaming Commission and the Gaming Advisory Commission, the executive director and members of the Racing Commission, the executive director of the North Dakota Lottery, charitable organizations, and various horse racing entities. The committee's deliberations centered on the role and need for the State Gaming Commission and Racing Commission concerns.

Role and Need for the State Gaming Commission

The committee received testimony regarding the role of the State Gaming Commission and whether, in light of the limited duties of the commission, whether the commission was necessary. According to the testimony, the only statutory duty of the State Gaming Commission is to adopt administrative rules for charitable gaming in the state. It was noted that there was a point in the history of charitable gaming when there was a disagreement between the gaming industry and the Attorney General. This disagreement led to the formation of the State Gaming Commission. It was noted that the gaming industry now has a very good working relationship with the Attorney General and that the State Gaming Commission may not be needed as much as it was at the time of its formation. The State Gaming Commission is a part-time commission without any paid staff. According to the testimony, the commission, which has a biennial budget of approximately \$6,000, directs the staff of the Gaming Division of the Attorney General's office to draft rules and conduct public hearings. It was noted that current practice could result in disagreement between the Gaming Division and the State Gaming Commission on the rules that should be adopted.

The committee considered a bill draft that would give the Attorney General the authority to adopt rules to administer and regulate the charitable gaming industry. The bill draft would create a gaming advisory commission composed of five members appointed by the Attorney General. Under the bill draft, the duties of the gaming advisory commission would be to advise the Attorney General on policy and general operation of charitable gaming. The bill draft would repeal NDCC Section 53-06.1-01.1, which provides for the State Gaming Commission.

Testimony from the Attorney General's office regarding the bill draft indicated that the Attorney General's office does not have any objections to the bill draft that establishes a gaming advisory commission, however, it was recommended that the size of the commission be increased from five to seven members. It was also recommended that the number of mandatory meetings of the advisory commission be reduced to two meetings per year. The testimony indicated that the current State Gaming Commission operates well but the Attorney General's office will not oppose the change if the Legislative Assembly wants to change the State Gaming Commission to an advisory commission. The committee revised the bill draft to reflect the recommended changes.

Testimony in opposition to the bill draft indicated that members of the State Gaming Commission believe that the commission serves an important function and should not be eliminated. According to the testimony, the State Gaming Commission has streamlined the gaming process and has worked hard to refine the administrative rules for charitable gaming. It

was noted that if the State Gaming Commission was eliminated, the benefit that the State Gaming Commission provides to the Legislative Assembly and the Attorney General would be lost. The testimony indicated that the proposed advisory commission would only be a sounding board and would not have any real authority. It was also noted that State Gaming Commission provides the gaming industry with representation.

Other testimony in opposition to the bill draft noted that the bill draft concentrates all the power for charitable gaming rulemaking and enforcement with the Attorney General which consequently diminishes the power of the Legislative Assembly and the Governor. According to the testimony, the State Gaming Commission's rulemaking authority has a check and balance procedure in place because all rules must be approved by the Administrative Rules Committee. It was noted that State Gaming Commission structure is very efficient and operates on a very limited budget. Members of the charitable gaming industry in opposition to the bill draft testified that the gaming industry is satisfied with the current structure. It was noted that charities are concerned that they may lose their voice in the gaming industry if the changes in the bill draft are made.

One committee members expressed concerns that there does not appear to be a valid reason for eliminating the State Gaming Commission and replacing it with an advisory commission. The committee concluded that the bill draft regarding the creation of a gaming advisory commission and the elimination of the State Gaming Commission should not be recommended to the Legislative Council.

Racing Commission Concerns

During the course of the committee's discussion of the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota, the committee received testimony that expressed concerns about the authority and activities of the North Dakota Racing Commission as well as the lack of oversight of the commission. Committee members also noted that there are concerns and frustrations from the horse industry about the composition of the Racing Commission as well as the lack of interest and knowledge of racing of the members.

The committee received testimony from the director of the Racing Commission regarding the activities of the Racing Commission. The testimony indicated that the Racing Commission, which is the regulatory body in charge of regulating live and simulcast racing in the state, has tried to accommodate the requests of the racing and horsemen's associations while at the same time hold funds in reserve. According to the testimony, given the resources available, the commission has attempted to keep racing in the state alive and well.

The committee also received testimony from representatives of the two charitable organizations that benefit from the proceeds of horseracing. According to the testimony, there are concerns about the distribution of the racing proceeds to charitable organizations. The testimony indicated that the charitable organizations have struggled to understand the terms, percentages, and procedures in horse racing and wagering. It was noted, however, that because it is nearly impossible for those not involved in the horseracing industry to master a thorough understanding of this system, some charitable organizations may have been too willing to accept the assurances and explanations the charities have received from the providers. According to the testimony, in spite of assurances from the Racing Commission that 2007 legislative changes would not adversely affect net revenues, that is what happened. It was noted that changes in the racing industry threaten the organization's ability to provide services to those who need them. The testimony indicated that the charitable organizations cannot continue to operate and lose money.

Testimony from representatives of the horseracing industry indicated that in the national landscape of racing legislation, North Dakota and Oregon stand out as possessing the most advantageous tax structure for advanced deposit wagering. It was noted, however, that although North Dakota possesses some of the most nationally competitive gaming legislation available today, it does not, from outside appearances, possess an internal structure that is attractive to would-be advanced deposit wagering companies. According to the testimony, Oregon's Racing Commission has been strongly supported by both its state legislators and horsemen and, as a result, has become home to many of today's top advanced deposit wagering companies. It was noted that when faced with continual North Dakota headlines wherein the very existence of the state's Racing Commission is in question, it makes attracting new business to the state a very difficult proposition. It was also noted that a stable and progressive-minded regulatory infrastructure is crucial in enticing new or existing advanced deposit wagering companies to reside in the state. The testimony indicated that stability in leadership, direction, and legislative expectations are key to the continued growth of the horse racing industry in the state. According to the testimony, continuity of leadership, focus of direction, and serving the best interests of the majority should be the focus of the Racing Commission. It was noted that the industry is not opposed to oversight of the Racing Commission by the Attorney General, but a central body with a director is important.

During the course of the discussions regarding the Racing Commission, several committee members expressed concerns that the Racing Commission does not work well as a stand-alone agency. The committee members also expressed the need for accountability to another

governmental entity. In response to the concerns regarding the Racing Commission, the committee considered a bill draft that would give the Attorney General supervisory authority over the Racing Commission. Testimony in explanation of the bill draft indicated that the bill draft would restore the Attorney General's authority over the Racing Commission as it existed before the changes made by the Legislative Assembly in 2005.

Testimony regarding the bill draft from a representative of the Attorney General's office indicated that there is some concern about having oversight without the ability to appoint the members of the Racing Commission.

Testimony from representatives of the horse industry indicated that because of the dissention between the horsemen and the racing industry, there is a need for some changes but the problems are not insurmountable. While the testimony did not oppose the bill draft, the continued need for a central body and a director for those involved in the horseracing industry to take their concerns was emphasized.

RECOMMENDATION

The committee recommends a bill relating to the oversight of the North Dakota Racing Commission. The bill would provide that the Racing Commission is subject to the supervision and direction of the Attorney General.

Testimony of the Attorney General during 59th legislative session (2005) when the Racing Commission was transferred out of the Attorney General's office.

(attachment)
582043

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2340

House Agriculture Committee

Conference Committee

Hearing Date 3--04--05

submitted by
Tom Trembath
Chief Deputy

Tape Number	Side A	Side B	Meter #
ONE		B	24-1 TO 34-7
Committee Clerk Signature			

Minutes:

CHAIRMAN NICHOLAS: Committee Members, we will open on SB 2340. We have the Attorney General with us this morning.

WAYNE STENEHJEM: ATTORNEY GENERAL N. D. Thank you. I am appearing in support of SB 2340 which has to do with the state racing commission. It is an issue that more or less came up during the time that we were having problems with racing services Inc. It appears to me that we have what is not a very good arrangement from a governmental perspective on how we establish the state racing commission. I want first point this has nothing to do with individuals and personalities. It has simply do with how the racing commission is structured in ND. The racing commission has kind of been battered around I guess from time to time. The current statute says that the racing commission is the part of the office of the Attorney General but the members of the racing commission are appointed by the Governor and the racing commission hires the racing commissioner who is then placed in my office. The

situation I have and I am not talking about any individual, I have this racing commissioner in my office who I did not hire. That I can't discipline and I can't fire even if I wanted to. That is really not a very optimal way to run an operation. Everyone else who works for me knows that they are subject to direction from the Attorney General and that is the way every other agency runs.

They employ the people the work for them. They hire them. They are subject to the rules of the agency. The duties of the racing commission is to promote racing. We regulate gambling. We license them, we prosecute them. We don't promote charitable gaming. In North Dakota.

That is the way it should be. I think the better approach in this matter is to simply set them aside as a separate commission just like every other commission that the governor appoints.

And have the governor still appoint the different groups. Like the commodity group.

The one exception to that I would like to continue to audit and regulate and if necessary prosecute violations of the regulations of the state. That is what we have done in the past. The

amendments that you have adds an emergency clause to the bill. The reason for that if the bill is passed would take effect probably on July first. The budget for the racing commission

Currently is HB 1003 that take effect July first. It would be smart to do it now rather than the middle of the summer rather when they are in the middle of the racing season. Then having to

go through that turmoil. The racing commission is currently in one of our offices here in

Bismarck on ninth street. They pay rent to us. We also provide attorney services for them and they pay us for that. If we do auditing we will continue to bill them for that. That in a nut shell is it.