

By: Geren

H.J.R. No. 78

A JOINT RESOLUTION

1 proposing a constitutional amendment authorizing casino gaming and  
2 requiring creation of a Texas Gaming Commission to regulate gaming  
3 and casino-based development projects in this state and authorizing  
4 the state to operate video lottery games at racetracks and on Indian  
5 lands.

6 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Subsection (a), Section 47, Article III, Texas  
8 Constitution, is amended to read as follows:

9 (a) The Legislature shall pass laws prohibiting lotteries  
10 and gift enterprises in this State other than those authorized by  
11 Subsections (b), (d), [~~and~~] (e), and (f) of this section and Section  
12 47a of this article.

13 (f) The Legislature by general law in accordance with this  
14 section may authorize this state to control and operate a video  
15 lottery system under which individuals may play lottery games of  
16 chance on video lottery terminals owned and operated by persons  
17 licensed or otherwise authorized by this state, and may authorize  
18 other games of chance to be conducted to supplement lottery games at  
19 licensed or authorized locations, in order to generate revenue for  
20 public purposes. The law authorizing a video lottery system must:

21 (1) except as otherwise provided by this section,  
22 require this state to continually monitor the activity of each  
23 video lottery terminal and remotely terminate the operation of a  
24 terminal as necessary to protect the public health, welfare, or

1 safety or the integrity of the state lottery or to prevent financial  
2 loss to the state;

3 (2) include a comprehensive registration program to  
4 govern a person that manufactures, distributes, sells, or leases  
5 video lottery terminals for use or play in this state and a process  
6 to approve terminals for use in the video lottery system in  
7 accordance with technical standards established by this state;

8 (3) provide for a comprehensive licensing program  
9 govern a person that owns, manages, or maintains video lottery  
10 terminals operated in this state;

11 (4) limit the operation of video lottery games on  
12 behalf of this state to only the following legal entities:

13 (A) a person that is licensed in this state on  
14 January 1, 2005, to conduct wagering on a horse race or greyhound  
15 race or that has submitted on or before that date an application to  
16 be licensed by this state to conduct wagering on a horse race or  
17 greyhound race, provided that the person may be licensed to conduct  
18 video lottery games only at a location licensed for conducting  
19 horse races or greyhound races; or

20 (B) a federally recognized Indian tribe, which,  
21 under an agreement with this state in the form prescribed by general  
22 law or negotiated by the governor and ratified by the Legislature,  
23 may conduct the games only on land:

24 (i) held in trust by the United States for  
25 the tribe pursuant to federal law and designated by the applicable  
26 tribe for video lottery activity; or

27 (ii) held in trust by the United States for

1 the benefit of the tribe on which Class III gaming is permitted  
2 under the Indian Gaming Regulatory Act of 1988 (P.L. 100-497,  
3 codified at 18 U.S.C. Section 1166 et seq. and 25 U.S.C. Section  
4 2701 et. seq.) and designated by the tribe for lottery activity;

5 (5) prescribe the method for allocating video lottery  
6 terminals that may be operated by an entity listed under  
7 Subdivision (4) of this subsection, which method must include  
8 consideration of demographic, public health and safety, and  
9 optimization of state revenue;

10 (6) authorize this state to impose and collect state  
11 taxes on the purchase, use, or other consumption of a good or  
12 service at a video lottery facility on tribal land by a person who  
13 is not a member of the Indian tribe operating the facility;

14 (7) prohibit and impose criminal penalties for the  
15 possession and operation of all electronic and mechanical gaming  
16 devices other than video lottery system or gaming devices  
17 authorized by a law enacted under this section; and

18 (8) prohibit the operation or possession of a video  
19 lottery terminal or other similar gaming device that is not subject  
20 to this state's measures for monitoring and terminating operation  
21 of the terminal required by this subsection and does not generate  
22 revenue for this state, except that the law may provide for limited  
23 storage of video lottery terminals as authorized and supervised by  
24 this state and for possession of video lottery terminals by this  
25 state for testing and evaluation.

26 (f-1) After an election of the voters approving Section 47a  
27 of this article and until such time as the Legislature enacts laws

1 under Subsection (f), the Texas Lottery Commission may collect a  
2 fee of \$15,000 for each video lottery, terminal that a person  
3 described in Subsection (4) may apply for. The commission shall  
4 adopt rules to allow for the operation of the a video lottery  
5 system. This subsection expires January 1, 2008.

6 (f-2) Net revenue generated from video lottery terminals  
7 located at a racetrack shall be distributed as follows:

8 (A) 30 percent to the racetrack; and

9 (B) 70 percent to this state.

10 This subsection expires January 1, 2008

11 (f-3) The law enacted under Subsection (f) must abolish the  
12 Texas Racing Commission and the Texas Lottery Commission and merge  
13 the functions of those agencies into the Texas Gaming Commission  
14 not later than January 1, 2007. This subsection expires January 1,  
15 2008

16 (g) An applicant for a license, registration, or other  
17 affirmative regulatory approval under a law enacted under  
18 Subsection (f) of this section is a revocable privilege, and the  
19 person does not acquire any vested right in or under the privilege.  
20 The courts of this state do not have jurisdiction to review a  
21 decision to deny, limit, or condition a license, registration, or  
22 request for approval unless the judicial review is sought on the  
23 ground that the denial, limitation, or condition is based on a  
24 suspect classification, such as race, color, religion, sex, or  
25 national origin, in violation of the Equal Protection Clause of the  
26 Fourteenth Amendment to the United States Constitution. The court  
27 must affirm the denial, limitation, or condition unless the

1 violation is proven by clear and convincing evidence.

2 SECTION 2. Article III, Texas Constitution, is amended by  
3 adding Section 47a to read as follows:

4 Sec. 47a. (a) The legislature by general law shall  
5 authorize and regulate casino gaming conducted by a person licensed  
6 by this state.

7 (b) The legislature by general law shall establish a Texas  
8 Gaming Commission to administer the laws regulating gaming  
9 activities authorized by this section or Section 47 of this  
10 article.

11 (b-i) The law enacted under Subsection (b) must abolish the  
12 Texas Racing Commission and the Texas Lottery Commission and merge  
13 the functions of those agencies into the Texas Gaming Commission  
14 not later than January 1, 2007. This subsection expires January 1,  
15 2008.

16 (c) The Texas Gaming Commission established under this  
17 section must consist of five members appointed as follows:

18 (1) one member appointed by the governor;

19 (2) one member appointed by the lieutenant governor;

20 (3) one member appointed by the speaker of the house of  
21 representatives;

22 (4) one member appointed by the attorney general; and

23 (5) one member appointed by the comptroller of public  
24 accounts.

25 (c-1) Not later than January 1, 2006, the initial members of  
26 the gaming commission shall be appointed as provided by Subsection  
27 (c) of this section to terms as follows:

1           (1) the initial term of the member appointed under  
2 Subsection (c) (1) of this section expires January 1, 2008;

3           (2) the initial terms of the members appointed under  
4 Subsections (c) (2) and (4) of this section expire January 1, 2010;  
5 and

6           (3) the initial terms of the members appointed under  
7 Subsections (c) (3) and (5) of this section expire January 1, 2012.

8           (c-2) Subsection (c-i) of this section and this subsection  
9 expire January 1, 2013.

10          (d) Members of the commission appointed under Subsection  
11 (c) of this section serve staggered terms of six years, with the  
12 terms of one or two members expiring January 1 of each even numbered  
13 year.

14          (e) A vacancy in a commission membership shall be filled for  
15 the unexpired term in the same manner as the original appointment.

16          (f) The general law enacted under Subsection (a) of this  
17 section must authorize the licensing by the commission of 12  
18 casino-anchored destination attraction development projects in  
19 this state as follows:

20               (1) seven projects in urban areas, allocated  
21 population;

22               (2) three projects in counties adjacent to the coast  
23 that are tourist destinations with at least 1,000 guest rooms  
24 available for visitors; and

25               (3) two additional projects, at locations to be  
26 determined by the commission to achieve targeted economic  
27 development or permanent new job creation, or based on other

1 considerations determined appropriate by the commission.

2 (g) The commission may not award a license for a  
3 casino-anchored destination attraction development project unless  
4 the project meets the major economic development qualifications  
5 established by this subsection. The minimum total land and  
6 development costs for a project to qualify for a license are as  
7 follows:

8 (1) \$400 million for an urban area project;

9 (2) \$200 million for a tourist destination project in  
10 a coastal area; and

11 (3) \$150 million for an additional project.

12 (h) A political subdivision of this state may not offer or  
13 award a tax abatement, tax credit, tax subsidy, tax exemption or any  
14 other form of publicly funded incentive to assist, develop, or aide  
15 in the establishment or operation of a casino-anchored destination  
16 attraction development project.

17 (i) A facility or land used in connection with the operation  
18 of a casino-anchored destination attraction shall be subject to all  
19 applicable state and local taxation, including ad valorem taxation.

20 (j) A local option election shall be held in the manner  
21 determined by the commission in each county in which a person  
22 applies for a license for a casino-anchored destination attraction  
23 development project. The commission may not award a license for a  
24 project unless a majority of the voters of the county voting in the  
25 election favor selection of that county as the site for a project.  
26 The commission may not award a license for a project located in a  
27 municipality unless a majority of the voters of the municipality

1 voting in the local option election favor the proposition to allow a  
2 casino-anchored destination attraction development project in the  
3 county.

4 (k) The commission may not award a license for a casino  
5 anchored destination attraction development project to a person  
6 unless at least 51 percent of the development project will be owned  
7 by residents of this state who have maintained their principal  
8 residence in this state for not less than the two years preceding  
9 September 1, 2005.

10 (1) the legislature shall provide the initial funding  
11 for the commission through a loan from the Texas Enterprise Fund in  
12 the amount of \$2.5 million. The commission shall repay the loan  
13 with interest from the first money received by the commission from  
14 license fees received in connection with licenses for  
15 casino-anchored destination attraction development projects.

16 SECTION 3. This proposed constitutional amendment shall be  
17 submitted to the voters at an election to be held November 8, 2005.  
18 The ballot shall be printed to provide for voting for or against the  
19 proposition: "The constitutional amendment authorizing limited  
20 casino gaming in Texas, providing local elections for final  
21 approval of proposed casino-based development projects, and  
22 providing for a Texas Gaming Commission to regulate gaming in this  
23 state."