

March 13, 2019

The Honorable John Barker, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 285-N
Topeka, Kansas 66612

Dear Representative Barker:

SUBJECT: Fiscal Note for HB 2390 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2390 is respectfully submitted to your committee.

HB 2390 would allow the Kansas Lottery to enter into contracts with lottery gaming facility managers or racetrack gaming facility managers for operating and managing sports wagering in-person at their facility or over the internet through an interactive sports wagering platform. Each gaming facility manager would only be allowed to contract with one interactive sports wagering platform, but could also contract with a third party to provide ancillary services related to sports wagering, including banking for sports wagering operations, setting of odds for sports wagering, and supplying equipment, software, and any other items needed to process sports wagers in-person or through the interactive sports wagering platform. If a lottery gaming facility manager and racetrack gaming facility manager offer sports wagering, then the management contract would include a provision that 6.75 percent of the sports wagering revenues (total revenues from sports wagering after applicable fees, federal excise taxes, and all prize related payments are made) would be distributed to the Expanded Lottery Revenues Fund. If the lottery gaming facility manager or racetrack gaming facility manager agrees to offer sports wagering, the Kansas Lottery would be the licensee and owner of all software programs used in offering sports wagering. All sports wagering would be under the ultimate control of the Kansas Lottery.

Sports wagering operators would be required to immediately report to the Kansas Racing and Gaming Commission any criminal or disciplinary proceedings; abnormal wagering activity or patterns that may indicate a concern with the integrity of a sporting event or events; any conduct that corrupts a betting outcome of a sporting event for purposes of financial gain, including match fixing; and any wagering activity that the operator know or suspects violates federal or state laws including the use of funds derived from illegal activity, using other individuals to place wagers, or the use of a false identification when placing a wager. The sports wagering operator would be required to use reasonable steps to prohibit an individual convicted of a felony or misdemeanor offense involving sports wagering from placing a wager with the operator. The sports wagering operator would be required to prohibit an individual from placing a wager with the operator if the

individual enrolls in the voluntary exclusion program. The bill would prohibit sports wagering for persons under 21 years of age.

The Kansas Racing and Gaming Commission would be required to review applications for an interactive sports wagering platform license. The Kansas Racing and Gaming Commission would be allowed to suspend or revoke an interactive sports wagering license and could impose a civil fine of up to \$10,000 per violation. The bill would allow confidential licensee information to be exempt from the Kansas Open Records Act and would include a sunset provision of July 1, 2024. The bill includes definitions of interactive sports wagering platform, match fixing, sporting event, sports wagering, sports wagering operator, sports wagering revenue, and wager or bet. Sports wagering would not include parimutuel wagering. The Kansas Lottery and the Kansas Racing and Gaming Commission would have the authority to write rules and regulations to implement the bill.

The bill would prohibit any person from serving as the Executive Director, a member of the Kansas Lottery Commission, or an employee of the Kansas Lottery while or within five years after holding a financial interest, being employed by, or acting as a consultant to any interactive sports wagering platform. It would also be illegal for these individuals to accept any compensation, gift, loan, entertainment, favor, or service from any interactive sports wagering platform, and any violation of this provision could be punishable as a class A misdemeanor.

The bill would require the Kansas Racing and Gaming Commission to establish certification requirements and enforcement procedures for employees of a lottery gaming facility manager or racetrack gaming facility manager who are directly involved in the conduct, operation, or management of sports wagering. The certification requirements and enforcement procedures would also apply to persons that have a contract with a lottery gaming facility manager or racetrack gaming facility manager for providing goods or services related to sports wagering. The certification requirements would include compliance with security, fitness, and background investigations.

The Kansas Racing and Gaming Commission indicates that HB 2390 would require at least 3.00 additional FTE positions and \$265,000 annually for ongoing costs to regulate sports wagering. Actual costs would vary as the Commission would determine the industry specific tools necessary to regulate this industry. Sports wagering at parimutuel racetracks would require the racetrack to reopen, likely with electronic gaming machines. Racetrack gaming facility managers would first be required to obtain a parimutuel license from the Kansas Racing and Gaming Commission before they could negotiate with the Kansas Lottery for a contract to offer sports wagering or electronic gaming machines. To operate electronic gaming machines, a contract with a racetrack gaming facility manager would have to be approved by the Kansas Lottery and a background investigation would have to be approved by the Kansas Racing and Gaming Commission. The Commission indicates that it would need approximately \$1.8 million and 21.00 FTE positions for each parimutuel racetrack that reopens for the annual costs to regulate both the racing and gaming activities. Start-up costs of approximately \$450,000 per facility would also be needed for expenses, such as background investigations, licensing equipment, software licenses, computer equipment, furniture and supplies, and other expenses that would be associated with reopening each facility. Funding for regulating racing activities has primarily come from the

transfer of parimutuel tax receipts to the State Racing Fund. The appropriations bill each year provides the authority for the Kansas Racing and Gaming Commission to bill each facility for all costs related to regulating racing activity.

The Kansas Lottery indicates that it would need to hire between two and three new employees for each parimutuel gaming facility that could open as a result of this bill. However, without knowing the size of the proposed facility and when the facility would open, the Kansas Lottery is unable to make an estimate of its gaming related expenses. The Kansas Lottery indicates that when it has negotiated contracts with gaming facility managers, it has required that all of its gaming related expenses be reimbursed by the manager. Direct gaming expenses are billed directly to the specific gaming facility manager and indirect expenses are prorated to all managers. The Kansas Lottery indicates that it would incur significant staff and other startup costs during the implementation phase, but it is unable to estimate specific amounts or positions necessary to implement the provisions of the bill. In addition, the Kansas Lottery is unable to estimate the additional expenses to implement a sports wagering system because it unknown how widespread sports wagering would be offered.

The Kansas Lottery indicates the sports wagering industry operates significantly different from the existing casino gaming. To achieve the maximum desired return on all bets placed, a sports wagering operator seeks to create equal wagering on both sides of a sporting event. A lopsided distribution of the wagers creates risk for the operators and the potential to pay out significantly more than what is taken in. Approximately 95.0 of the gross amounts wagered on sporting events goes back to the winning wager, which leaves 5.0 percent for administrative fees, taxes, and profit. The Kansas Lottery is unable to provide an estimate of additional revenues from offering sports wagering at existing lottery gaming facilities; reopened racetrack gaming facilities; or through a licensed interactive sports wagering platform without a detailed market study. The Kansas Lottery indicates that a well-designed and well-implemented sports wagering system would generate significant revenues in future years, but it is doubtful that it could be implemented to have significant effect in FY 2020.

There are two studies (Eilers-Krejcik and AGA-Oxford) on potential nationwide and state-specific projections for revenues and gross wagering. The studies indicate that gross wagers placed in Kansas could reach nearly \$1.0 billion with limited availability of sports wagering (sportsbooks only available at casinos) or more than \$2.0 billion with convenient availability of sports wagering (sportsbooks at casinos, retail locations, and online) that is fully implemented. The proposed bill would implement a sports wagering system that could be characterized as “convenient availability.” The studies use a number of variables to estimate the impact of sports wagering in Kansas, including comparing certain demographics in Kansas to Nevada where sports wagering is legal, the number of existing gambling outlets, and the level of spend in those outlets to help determine the perceived competitiveness of the market. The studies also suggest that a large portion of currently illegal sports betting would shift to legal markets. Taking a more conservative approach to the estimates, the bill would likely result in \$1.0 billion in gross wagers placed in Kansas. Under this scenario, and after approximately 95.0 percent of the gross amount sports wagers are paid to the winning wagers, then approximately 5.0 percent or \$50.0 million would be available for administrative fees, taxes, and profit. The state share of revenues, under this scenario,

would be approximately \$3,375,000 that would be deposited in the Expanded Lottery Revenues Fund (6.75 percent x \$50.0 million).

The Department for Aging and Disability Services indicates that allowing sports wagering activity would likely increase demand for services provided by its Problem Gambling Program. The Department indicates that the amount of additional spending would be dependent on the how readily available sports wagering would be offered in the state. The Department also has concerns that there is not a funding mechanism from sports wager activity that provides additional revenues to the Problem Gambling and Addictions Grant Fund that would support additional expenditures in its Problem Gambling Program.

The Attorney General's Office indicates that litigation involving the Kansas Sports Wagering Act would be unlikely since the U.S. Supreme Court overturned the federal law prohibiting states from authorizing and conducting sports wagering in May 2018. If there are additional litigation costs as a result of the bill, the Office would likely hire outside counsel. However, the Office did not provide an estimate of any potential litigation costs or how long the estimated litigation costs would continue from enactment of the bill.

The bill has the potential for increasing litigation in the courts because of the new crimes created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to estimate the number of additional court cases that would arise or how complex and time-consuming the cases would be. The fiscal effect would most likely be negligible and could be accommodated within the existing budget resources. The Kansas Sentencing Commission indicates that the bill could have an effect on prison admissions and beds; however, the Commission did not provide a specific estimate. Any fiscal effect associated with HB 2390 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,



Larry L. Campbell
Division of the Budget

cc: Stephen Durrell, Lottery
Brandi White, Racing & Gaming Commission
Willie Prescott, Office of the Attorney General
Janie Harris, Judiciary
Scott Schultz, Sentencing Commission
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