

May 10, 2012

The Honorable Pete Brungardt, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 136-E
Topeka, Kansas 66612

Dear Senator Brungardt:

SUBJECT: Fiscal Note for SB 472 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 472 is respectfully submitted to your committee.

SB 472 would amend the Kansas Expanded Lottery Act and Kansas Parimutuel Wagering Act, and would create the Kansas Agricultural Opportunity Act. The bill would authorize Sedgwick County to hold a special election within 120 days of the effective date of the bill to allow the Kansas Lottery to operate electronic gaming machines at a parimutuel racetrack facility located in Sedgwick County.

The bill would change the distribution of net electronic gaming machine revenue from racetrack gaming facilities based on the location of the facility and the year that the facility is in operation. The bill would increase the amount of revenue distributed to racetrack gaming facility managers from 25.0 percent to 65.0 percent in the first and second years of operation, to 63.0 percent in the third year of operation, and to 61.0 percent in the fourth year and all future years of operation; the Live Horse Racing Purse Supplement Fund and the Live Greyhound Racing Purse Supplement Fund would each increase from 7.0 percent to 8.0 percent in the first and second years of operation, to 10.0 percent in third year of operation, and to 12.0 percent in the fourth year and all future years of operation; the share going to cities and counties would be reduced from 3.0 percent to 2.0 percent; the Problem Gambling and Addictions Grant Fund would continue to receive 2.0 percent; the Horse Fair Racing Benefit Fund would continue to receive 1.0 percent, the state's share in the Expanded Lottery Act Revenues Fund (ELARF) would be reduced from 40.0 percent to 22.0 percent; and the bill would eliminate the 15.0 percent share of gaming revenues that is to be used for gaming expenses of the racetrack gaming facility manager. Under current law, the 15.0 percent share of revenues can be used for any gaming expenses, subject to the agreement between the Kansas Lottery and the facility manager. For the south central and southeast gaming zones, the bill would also provide 1.0 percent of the net electronic gaming machine revenue to the Development and Promotions Fund of the Kansas Department of Wildlife, Parks and Tourism, for the purpose of promoting tourism. However, the bill does not provide an offsetting reduction of 1.0 percent, which would over-allocate the amount of available net electronic gaming machine revenues.

The bill would remove the earning caps on both the Live Horse Racing Purse Supplement Fund and the Live Greyhound Racing Purse Supplement Fund. Under current law, the electronic gaming machine revenue that is to be transferred to each of these funds is limited to an average of \$3,750 per machine per location. The bill would also require that electronic gaming machine revenue collected at greyhound racetracks be used to support only the Live Greyhound Racing Purse Supplement Fund and that electronic gaming machine revenue collected at horse racetracks be used to support only the Live Horse Racing Purse Supplement Fund. If a racetrack were licensed to conduct both horse racing and greyhound racing, then the Live Horse Racing Purse Supplement Fund and the Live Greyhound Racing Purse Supplement Fund would each receive a share of the net electronic gaming machine revenues, which would over-allocate the amount of available net electronic gaming machine revenues.

The bill would allow the Kansas Lottery to allocate the entire 2,800 authorized electronic gaming machines to be placed at racetrack gaming facilities; however, each racetrack gaming facility would be required to have between 400 and 1,200 machines. Current law allows for the first 2,200 machines to be allocated and then a bidding process to place the remaining 600 machines would occur at a later date. The current bidding process allows lottery gaming facility managers to bid to prevent the placement of additional machines at racetrack gaming facilities. Each horse or greyhound racetrack would be required to conduct a minimum number of live races in order to operate electronic gaming machines. However, the racetrack in Wyandotte County would not be required to conduct a minimum amount of live races in the first year of operations.

The bill would also increase, from 0.5 to 5.0 percent, the level of ownership in gaming facility managers and those who propose to provide gaming-related goods or services to the gaming facility that would be required to undergo a background investigation by the Kansas Racing and Gaming Commission. The bill adds provisions requiring background investigations of officers, directors, key employees and five-percent owners of these companies if publicly traded. However, the bill would require the Executive Director of the Kansas Racing and Gaming Commission to develop a procedure for the waiver of background requirements for any institutional investors, such as mutual funds.

The bill would reduce the minimum investment required for a manager of a state-owned lottery gaming facility, or destination casino, in the southeast gaming zone from \$225.0 million to \$50.0 million. The privilege fee for the southeast gaming zone would also be reduced from \$25.0 million to \$5.5 million. The bill would also require gaming facility managers to pay for the gaming related expenses of the Kansas Lottery and would make other technical corrections to the Kansas Expanded Lottery Act.

The bill makes changes to the authorized expenditures from the Greyhound Breeding Development Fund, including removing the 15.0 percent transfer to the Greyhound Tourism Fund; placing a cap (35.0 percent or \$100,000 per fiscal year, whichever is less) on research relating to the prevention of injury to and disease of greyhounds; and adjusting the amounts that can be used to supplement purses and stakes races for Kansas-whelped greyhounds from 50.0 percent of the fund to the remaining balance of the fund. The bill would also eliminate some of

the restrictions on simulcasting and would allow county fair associations to operate simulcasting for additional days.

The Kansas Agricultural Opportunity Act would require that the official breed registering agencies for horses and greyhounds that have each been approved by the Kansas Racing and Gaming Commission, to make recommendations to the Commission on or before December 1, for the implementation of programs which will maximize the economic development benefits in rural Kansas from purse supplements that are authorized under the Expanded Lottery Act and to implement procedures related to racing operations. The bill also requires the official breed registering agencies to submit an annual report to the Commission by January 15th of each year. This bill would take effect upon its publication in the *Kansas Register*.

SB 472 would not require additional staffing or expenditures by the Kansas Racing and Gaming Commission, the Kansas Lottery, or any other state agency unless a contract with a racetrack gaming facility manager or lottery gaming facility manager is approved by the Kansas Lottery and a background investigation is approved by the Kansas Racing and Gaming Commission. Racetrack gaming facilities would also have to reapply to the Kansas Racing and Gaming Commission to obtain a current parimutuel license. The proposed changes to the distribution of gaming facility revenue could provide an incentive for the Woodlands Racetrack in Kansas City and Camptown Greyhound Park in Frontenac to negotiate a contract with the Kansas Lottery in order to reopen both of these facilities with electronic gaming machines. A contract could not be approved with the Wichita Greyhound Park, unless the voters of Sedgwick County first approve the operation of electronic gaming machines in a special election authorized by the bill. The expenses of conducting a special election would be the responsibility of Sedgwick County. The Sedgwick County Election Commissioner has previously indicated that the costs associated with conducting a special election would be approximately \$124,000.

The Kansas Lottery indicates that it would need to hire between two and three new employees for each new gaming facility that would open as a result of this bill. However, without knowing the size of the proposed facility and when the facility would open, the Lottery is unable to make a precise 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 proposed changes to the privilege fee amount and minimum investment levels for the southeast gaming zone may encourage potential gaming facility managers to submit proposals for this zone. The Kansas Lottery indicates that the state is prohibited from designating additional areas of the state where gaming facilities are authorized until July 1, 2032. Permitting a revote to allow Wichita Greyhound Park to reopen with electronic gaming machines may be viewed as an expansion of gaming that is prohibited under the Kansas Expanded Lottery Act. If it is determined that SB 472 violates this provision, the state would be required to refund privilege fees from already selected gaming facility managers plus 10.0 percent interest. Currently, the state has received \$55.5 million in privilege fees from three gaming facility

managers and it is estimated that interest payments would require an additional \$12.0 million presumably to be paid from the State General Fund.

The Kansas Racing and Gaming Commission indicates it would need approximately \$1.8 million and 21.00 FTE positions for each parimutuel racetrack that reopens in FY 2013 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 racing activities would come primarily from the State Racing Fund once racing resumes and revenue is generated. Until that time, there is adequate authority in current law for the Kansas Racing and Gaming Commission to bill the facility for all costs related to regulation until the State Racing Fund generates the necessary revenues to cover expenses. The facility would also be billed for all direct costs at the facility and would pay a portion of indirect costs for all general gaming regulatory operational expenses.

The Kansas Racing and Gaming Commission indicates it would need approximately \$700,000 and 11.00 FTE positions to regulate the gaming operations at the south central gaming zone. Start-up costs of approximately \$450,000 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 opening this facility. The lottery gaming facility would be billed for all direct costs at the facility and would pay a portion of indirect costs for all general gaming regulatory operational expenses. The Lottery Gaming Facility Review Board would also need to be convened for the lottery gaming facility management contract approval process which would create additional costs.

A reliable estimate of the revenue that might be generated as a result of SB 472 cannot be made without a detailed market study, which would include an estimate as to when each facility would be operational and the number of electronic gaming machines that would be placed at each facility. The bill would reduce the state's share under the current Act; however, no monies will be generated unless the electronic gaming machines are in operation.

The Department of Social and Rehabilitation Services indicates that additional gaming facilities would likely increase demand for services provided by its Problem Gambling Program. The Department estimates that it will require an additional \$246,666 in FY 2013 to maintain its current level of service across the state if additional gaming facilities begin operations in the state.

The Department of Wildlife, Parks and Tourism indicates that the proposed changes to the distribution of net electronic gaming machine revenues has the potential to provide additional resources for the promotion of tourism if racetrack gaming facilities are reopened in the south central and southeast gaming zones.

The bill would reduce the share of revenue provided to local governments from parimutuel racetracks that reopen with electronic gaming machines. However, no monies for local

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governments are currently being produced from this source because the racetracks have remained closed. Any fiscal effect associated with SB 472 is not reflected in *The FY 2013 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Stephen Durrell, Lottery
Kathy Lewis, Racing & Gaming
Melissa Wangemann, KAC
Larry Baer, LKM