

March 17, 2020

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

Dear Senator Estes:

SUBJECT: Fiscal Note for SB 465 by Senate Committee on Ways and Means

In accordance with KSA 75-3715a, the following fiscal note concerning SB 465 is respectfully submitted to your committee.

SB 465 would amend the state's Expanded Lottery Act. The bill would change the distribution of net electronic gaming machine revenue from the racetrack gaming facility located in the northeast and south-central gaming zones. The amount of revenue distributed to the racetrack gaming facility manager would increase from 25.0 percent to either 50.0 percent at a greyhound racetrack or 57.0 percent at a horse racetrack. To balance out this increase, a corresponding reduction in revenues is in the bill. The state's share in the Expanded Lottery Act Revenues Fund would be reduced from 40.0 percent to 31.0 percent; the 3.0 percent share that is shared by local governments would be reduced to 2.0 percent; the 7.0 percent share going to the Live Greyhound Racing Purse Supplement Fund would be eliminated only at a horse racetrack; and the 15.0 percent share for gaming expenses of the racetrack gaming facility manager would also be eliminated. 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. The current 7.0 percent share to the Live Horse Racing Purse Supplement Fund, the 2.0 percent share to the Problem Gambling and Addictions Grant Fund, and 1.0 percent share to the Kansas Horse Fair Racing Benefit Fund would all remain unchanged.

The bill would change the distribution of net electronic gaming machine revenue from the racetrack gaming facility located in the southeast gaming zone. The amount of revenue distributed to the racetrack gaming facility manager would increase from 25.0 percent to either 49.0 percent at a greyhound racetrack or 56.0 percent at a horse racetrack. To balance out this increase, a corresponding reduction in revenues is in the bill. The state's share in the Expanded Lottery Act Revenues Fund would be reduced from 40.0 percent to 31.0 percent; the 7.0 percent share going

to the Live Greyhound Racing Purse Supplement Fund would be eliminated only at a horse racetrack; and the 15.0 percent share for gaming expenses of the racetrack gaming facility manager would also be eliminated. The current 7.0 percent share to the Live Horse Racing Purse Supplement Fund, the 3.0 percent share that is shared by local governments; the 2.0 percent share to the Problem Gambling and Addictions Grant Fund, and 1.0 percent share to the Kansas Horse Fair Racing Benefit Fund would all remain unchanged.

The bill would also remove the earning caps on the Live Horse Racing Purse Supplement Fund and the Live Greyhound Racing Purse Supplement Fund for all gaming zones. Under current law, the amount of electronic gaming machine revenue that is to be transferred to this fund is limited to an average of \$3,750 per machine. The bill would make other technical corrections to the Kansas Expanded Lottery Act.

SB 465 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 is approved by the Kansas Lottery and a background investigation is approved by the Kansas Racing and Gaming Commission. Racetracks 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 operate electronic gaming machines. The proposed changes to the distribution of gaming facility revenue could provide an incentive for parimutuel racetracks to negotiate a contract with the Kansas Lottery in order to reopen facilities with electronic gaming machines.

The Attorney General's Office indicates the bill has the potential to significantly increase litigation costs starting in FY 2021. However, the Office did not provide an estimate of the additional litigation costs or how long the estimated litigation costs would continue from enactment from the bill. Depending on current workload, the Office indicates that the bill could require it to hire outside counsel to defend the state.

The Kansas Lottery indicates that existing casino managers may file lawsuits claiming that the bill infringes on their rights under the terms of the original Kansas Expanded Lottery Act and their contracts with the State of Kansas. Casino managers entered into a contract with the state to manage the casinos under a certain set of statutory and contractual terms. To have those terms changed mid-contract may result in litigation from casino managers to possibly recover damages or other losses from the state. Litigation would likely be decided by the courts. The amount of monetary damages that could be awarded by the courts is unknown. It is also unknown if any possible damages would include the refunding of \$61.0 million in privilege fees that have already been collected from the four selected casino managers or if the damages would include any interest payments.

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 Kansas 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 Kansas Racing and Gaming Commission indicates 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. Current law requires the racetrack gaming facility manager to be responsible for the Commission's costs for regulating gaming activity at each racetrack.

The Department for Aging and Disability Services indicates that additional gaming facilities 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 number of additional gaming facilities that could open as a result of this bill.

A reliable estimate of the gaming facility revenue that might be generated as a result of SB 465 cannot be made without a detailed market study, which would include an estimate as to when the gaming facility would be operational, the location of the gaming facility, the size of the gaming facility, and if the new gaming facility would impact revenues from existing gaming facilities.

Sincerely,

A handwritten signature in black ink, appearing to read "L. L. Campbell", written in a cursive style.

Larry L. Campbell
Director of the Budget

cc: Keith Kocher, Lottery
Brandi White, Racing & Gaming Commission
Connie Hubbell, Aging & Disability Services
Willie Prescott, Office of the Attorney General