

February 20, 2019

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 98 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 98 is respectfully submitted to your committee.

SB 98 would amend the state's Expanded Lottery Act. Current law allows for the first 2,200 electronic gaming machines to be allocated and then a bidding process to place the remaining 600 machines occurs 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. 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 at least 400 machines and no more than 1,200 machines. Each horse or greyhound racetrack would be required to conduct a minimum number of races in order to operate electronic gaming machines. The gaming facility located in the northeast gaming zone would no longer be required to conduct greyhound racing, but it still would be required to conduct horse racing before it could operate electronic gaming machines.

The bill would change the distribution of net electronic gaming machine revenue from the racetrack gaming facility located in the northeast gaming zone. The amount of revenue distributed to the racetrack gaming facility manager would increase from 25.0 percent to 61.5 percent (62.5 percent if the facility is located in a city) in the first and second year of operation of a facility that is not located in a city, 59.5 percent (60.5 percent if the facility is located in a city) in the third year of operation of a facility that is not located in a city, and to 57.5 percent (58.5 percent if the facility is located in a city) in the fourth year and future years of operation of a facility that is not located in a city. The amount of revenue that goes to the Live Horse Racing Purse Supplement Fund would increase from 7.0 percent to 10.0 percent in the first and second year of operation, 12.0 percent in the third year of operation, and to 14.0 percent in the fourth year and future years of operation. The bill would also create the Kansas Horse Council Fund and provide 0.5 percent of the revenues for the development, promotion, and representation of the equine industry in Kansas.

To balance out these increases, 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 to 22.0

percent; the 7.0 percent share going to the Live Greyhound Racing Purse Supplement Fund would be eliminated; and the 15.0 percent share of gaming revenues that is to be used 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. The bill has the potential to reduce the amount of revenue that would go to the city and county from 3.0 percent to 2.0 percent depending on whether the racetrack gaming facility is located in a city. The county would receive the full 3.0 percent of revenues if the facility is not located in a city within the northeast gaming zone. If the facility is located in a city, then the city and county would each receive 1.0 percent. The current 2.0 percent share going to the Problem Gambling and Addictions Grant Fund and 1.0 percent share of revenue that goes to the Kansas Horse Fair Racing Benefit Fund would remain unchanged.

The bill would also remove the earning caps on the Live Horse Racing Purse Supplement Fund in the northeast gaming zone. 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. This earnings cap would remain at the other gaming zones. The bill would eliminate some of the restrictions on simulcasting and would allow county fair associations to operate simulcasting for additional days. 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.

SB 98 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 the Woodlands Racetrack in Kansas City to negotiate a contract with the Kansas Lottery in order to reopen that facility with electronic gaming machines.

The Attorney General's Office indicates the bill has the potential to significantly increase litigation costs starting in FY 2020. 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, or if the bill would require the hiring of outside counsel.

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 has 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 and would be proportional to current spending levels for problem gambling and addiction services. The Department also has concerns that additional gaming facilities and changes to the share of gaming facility revenues that is distributed to the Problem Gambling and Addictions Grant Fund would not provide adequate funding to support its Problem Gambling Program.

A reliable estimate of the gaming facility revenue that might be generated as a result of SB 98 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. Any fiscal effect associated with SB 98 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,



Larry L. Campbell  
Director of the Budget

cc: Stephen Durrell, Lottery  
Brandi White, Racing & Gaming Commission  
Willie Prescott, Office of the Attorney General  
Cody Gwaltney, Aging & Disability Services