

March 21, 2013

The Honorable Arlen Siegfried, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 185-N
Topeka, Kansas 66612

Dear Representative Siegfried:

SUBJECT: Fiscal Note for HB 2168 by Representative Grant, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2168 is respectfully submitted to your committee.

HB 2168 would amend the state's Expanded Lottery Act and would create the Kansas Agricultural Opportunity Act. First, the bill would allow the voters of Sedgwick County to file a petition with the Sedgwick County Election Office to hold a special election to allow the Kansas Lottery to operate electronic gaming machines at a parimutuel racetrack facility located in Sedgwick County. The bill would require the signatures of 5,000 qualified voters in Sedgwick County and would require the special election to occur within 120 days after the petition has been certified. If the voters of the special election approve the ballot measure, then the Executive Director of the Kansas Lottery would be authorized to enter into a contract with Wichita Greyhound Park to operate electronic gaming machines at that facility

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 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 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. Each horse or greyhound racetrack would be required to conduct a minimum number of races in order to operate electronic gaming machines.

The bill would change the distribution of net electronic gaming machine revenue from racetrack gaming facilities by increasing the amount of revenue distributed to racetrack gaming facility managers from 25.0 percent to 61.0 percent if the racetrack provides both horse and greyhound racing, and 68.0 percent if the racetrack only provides either horse or greyhound racing. The bill also creates the Kansas Horse Council Fund and would provide 0.1 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 (ELARF) would be reduced from 40.0 to 22.0 percent; the share going to cities and counties would be reduced from 3.0 percent to 2.0 percent; the share going to the Kansas Horse Fair Racing Benefit Fund would be reduced from 1.0 percent to 0.4 percent; the share going to the Problem Gambling and Addictions Grant Fund would be reduced from 2.0 percent to 0.5 percent; and the 15.0 percent share of gaming revenues that is to be used for gaming expenses of the racetrack gaming facility manager is 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 bill would also remove the earning caps on both the Live Horse Racing Purse Supplement Fund and the Live Greyhound Racing Purse Supplement Fund. Currently, the 7.0 percent of 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 require that electronic gaming machine revenue collected at greyhound racetracks be used to support the Live Greyhound Racing Purse Supplement Fund and electronic gaming machine revenue collected at horse racetracks be used to support the Live Horse Racing Purse Supplement Fund. In the event that a racetrack is licensed to operate both horse and greyhound racing, then both funds would each receive the full 7.0 percent of electronic gaming machine revenue.

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 5.0 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 eliminate the taxes on racetrack admissions, which under current law are deposited in the State Racing Fund. 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 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. 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*.

HB 2168 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. Racetracks would first be required to obtain a parimutuel license from the Kansas Racing and Gaming Commission before they would be able to 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 and Camptown Greyhound Park in Frontenac to negotiate a contract with the Kansas Lottery in order to reopen 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 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. Allowing 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 HB 2168 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 \$16.5 million presumably to be paid from the State General Fund.

The Kansas Lottery indicates that it would need to hire between two and three new employees for a 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

The Honorable Arlen Siegfried, Chairperson

March 21, 2013

Page 4—HB 2168

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 in FY 2014 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 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 \$150,000 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 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 revenue that might be generated as a result of HB 2168 cannot be made without a detailed market study, which would include an estimate as to when the facility would be operational, the location of the facility, and the size of the gaming facility. Any fiscal effect associated with HB 2168 is not reflected in *The FY 2014 Governor's Budget Report*.

Sincerely,



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

cc: Jackie Aubert, DCF
Stephen Durrell, Lottery

Melissa Wangemann, KAC
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