

March 27, 2015

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

Dear Representative Brunk:

**SUBJECT:** Fiscal Note for HB 2322 by House Committee on Agriculture and Natural Resources

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2322 is respectfully submitted to your committee.

HB 2322 would amend the state's Expanded Lottery Act and 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 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 the racetrack gaming facility located in the northeast gaming zone that operates parimutuel horse racing by increasing the amount of revenue distributed to racetrack gaming facility managers

from 25.0 percent to between 62.4 percent and 66.4 percent depending on the year of operation. The amount of revenue that goes to the Live Horse Racing Purse Supplement Fund would be set at 8.0 percent in the first and second year of operation, increases to 10.0 percent in the third year of operation, and increases to 12.0 percent in the fourth year and future years of operation, with corresponding decreases in the racetrack gaming facility manager's share. The bill would also create the Kansas Horse Council Fund and 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 Problem Gambling and Addictions Grant Fund would be reduced from 2.0 percent to 0.5 percent; the 7.0 percent 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 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 share going to the Kansas Horse Fair Racing Benefit Fund would remain unchanged at 1.0 percent.

The bill would change the distribution of net electronic gaming machine revenue from racetrack gaming facilities located in the southeast or south central gaming zones that operate parimutuel greyhound racing by increasing the amount of revenue distributed to racetrack gaming facility managers from 25.0 percent to 68.0 percent. The new Kansas Horse Council Fund would receive 0.1 percent of the revenues. To balance out these increases, a corresponding reduction in revenues is in the bill. The state's share in the 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 Problem Gambling and Addictions Grant Fund would be reduced from 2.0 percent to 0.5 percent; the share going to the Kansas Horse Fair Racing Benefit Fund would be reduced from 1.0 percent to 0.4 percent; the 7.0 percent going to the Live Horse 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 be eliminated. The share going to the Kansas Horse Fair Racing Benefit Fund would remain unchanged at 1.0 percent, and the share going to the Live Greyhound Racing Purse Supplement would remain unchanged at 7.0 percent.

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. Under current law, the amount 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 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 to determine who would be required to undergo a background investigation by the Kansas Racing and Gaming Commission. The bill would add 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 Kansas Agricultural Opportunity Act would require 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 would maximize the economic development benefits in rural Kansas from purse supplements that are authorized under the Expanded Lottery Act. The bill would also require the official breed registering agencies to submit an annual report to the Commission by January 15th of each year.

HB 2322 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, Wichita Greyhound Park, 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 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 2322 violates this provision, the state would be required to refund privilege fees from already selected gaming facility managers plus a compounded annual interest rate of 10.0 percent. Currently, the state has received \$55.5 million in privilege fees from three gaming facility managers and it is estimated that interest payments would be at least \$31.5 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 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.

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 2322 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 2322 is not reflected in *The FY 2016 Governor's Budget Report*.

Sincerely,



Shawn Sullivan,  
Director of the Budget

cc: Stephen Durrell, Lottery  
Brandi White, Racing & Gaming Commission  
Larry Baer, League of Municipalities  
Melissa Wangemann, Association of Counties  
Brad Ridley, Aging & Disability Services