

February 3, 2022

The Honorable Robert Olson, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 144-S
Topeka, Kansas 66612

Dear Senator Olson:

SUBJECT: Fiscal Note for SB 404 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 404 is respectfully submitted to your committee.

SB 404 would amend the Kansas Expanded Lottery Act and the Kansas Parimutuel Racing Act. First, the bill would allow the voters of Sedgwick County to file a petition with the Sedgwick County Election Office to hold an 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 at least 5,000 qualified voters in Sedgwick County and would require the election to occur within 150 days after the petition has been validated by the Sedgwick County Commission. If the voters of the 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. If the voters of the election disapprove the ballot measure, then another election could occur if the signatures of at least 5,000 qualified voters in Sedgwick County are again validated by the Sedgwick County Commission.

Under current law, the state is prohibited from entering into management contracts for more than four lottery gaming facilities or similar gaming facilities until July 1, 2032. The bill would redefine the enforceable provision that “similar gaming facilities” do not include racetrack gaming facilities.

Prior to execution of any racetrack gaming facility management contract, the Executive Director of the Kansas Lottery would be required to provide a written notice to any lottery gaming

facility manager that has a facility located in the same gaming zone of the proposed racetrack gaming facility contract. If a racetrack gaming facility is authorized in a gaming zone, then the bill would only let the lottery gaming facility manager in the same gaming zone make a claim that the contract authorizing the racetrack gaming facility violates the law. The lottery gaming facility manager would have 60 days after the notice to file a legal action at the Kansas Supreme Court to determine if the proposed contract with the parimutuel racetrack is in violation of the Kansas Expanded Lottery Act or creates a material breach of the lottery gaming facility manager's contract with the Kansas Lottery. The bill would only allow the lottery gaming facility manager in the south-central gaming zone to make a claim based on the Sedgwick County revote. Monetary damages awarded could not exceed an amount equal to the privilege fee paid by the facility manager plus accrued interest.

If the final judgment of the court orders the repayment of the privilege fees and interest to any lottery gaming facility manager then the Executive Director of the Kansas Lottery would not execute the contract unless they received the full judgment amount from the racetrack gaming facility manager. The bill would create the Privilege Fee Repayment Fund to be administered by the Kansas Lottery. Expenditures from the fund would be for repayment of the privilege fees, including accrued interest. The bill would require the Kansas Lottery to reimburse the racetrack gaming facility manager for the repayment no less than 50.0 percent of the amount of Expanded Lottery Act Revenues Fund revenue generated from the racetrack gaming facility on a monthly basis. The bill would create the Racetrack Gaming Facility Manager Repayment Fund to be administered by the Kansas Lottery. Expenditures from the fund would be for reimbursement to the racetrack gaming facility manager for a judgment to reimburse previously paid privilege fees plus interest to a lottery gaming facility manager.

Prior to the operation of historical horse race machines at any parimutuel racetrack, the Executive Director of the Kansas Lottery would be required to provide a written notice to any lottery gaming facility manager that has a facility located in the same gaming zone of the proposed operation of historical horse race machines. If the operation of historical horse race machines is authorized in a gaming zone, then the bill would only let the lottery gaming facility manager in the same gaming zone make a claim that the contract authorizing the operation of historical race machines violates the law. The lottery gaming facility manager would have 60 days after the notice to file a legal action at the Kansas Supreme Court to determine if the operation of historical horse race machines is in violation of the Kansas Expanded Lottery Act or creates a material breach of the lottery gaming facility manager's contract with the Kansas Lottery. Monetary damages awarded could not exceed an amount equal to the privilege fee paid by the facility manager plus accrued interest.

If the final judgment of the court orders the repayment of the privilege fees and interest to any lottery gaming facility manager then the Kansas Racing and Gaming Commission would not authorize the operation of historical race machines unless the Kansas Lottery received the full judgment amount from the facility manager licensee for the racetrack facility. Repayment of privilege fees would be deposited into the Privilege Fee Repayment Fund and expenditures from the fund would be for repayment of the privilege fees, including accrued interest. The bill would require the Kansas Racing and Gaming Commission to reimburse the facility manager licensee for

the racetrack facility no less than 50.0 percent of the amount of State Racing Fund revenue generated from the operation of historical horse race machines on monthly basis. The bill would create the Facility Manager Licensee Repayment Fund to be administered by the Kansas Racing and Gaming Commission. Expenditures from the fund would be for reimbursement to the facility manager licensee for the racetrack facility for a judgment to reimburse previously paid privilege fees plus interest to a lottery gaming facility manager.

The bill would authorize the operation of historical horse race machines at parimutuel horse racetracks with machines approved by the Kansas Racing and Gaming Commission. The parimutuel wagers placed on historical horse race machines is not dependent upon the type of breed that primarily races in live meets conducted or simulcast races displayed at the racetrack. Historical horse racing could be offered during any times approved by the Commission and would not be limited to times when live or simulcast races are being conducted. Historical horse race machines would randomly select one or more races when the patron deposits a wager. The machine would not display any information that would allow the patron to identify the historical horse race on which the patron is wagering before the wager is made. The machine would display statistical racing information that would have been available on the date the horse race actually occurred. The identity of the race would only be revealed after the wager has been placed and played. The total amount wagered on historical horse race machines would be subject to the parimutuel tax at a rate of 3.0 percent. The bill would require the Commission to adopt rules and regulations necessary to implement historical horse racing by January 1, 2023.

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 the racetrack gaming facility manager from 25.0 percent to 75.5 percent. To balance out this increase, a corresponding reduction in revenues is in the bill. The state's share of the Expanded Lottery Act Revenues Fund (ELARF) would be reduced from 40.0 to 22.0 percent; the current 3.0 percent share that is shared by local government would be reduced 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 share going to the Live Greyhound Racing Purse Supplement Fund would be eliminated; the 7.0 percent share going to the Live Horse Racing Purse Supplement Fund would be eliminated; the 1.0 percent share going to the Kansas Horse Fair Racing Benefit Fund would be eliminated; and the 15.0 percent share of gaming revenues that is to be used for gaming expenses 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 bill would change the distribution of net electronic gaming machine revenue from the racetrack gaming facility located in the south-central gaming zone that operates parimutuel horse racing by increasing the amount of revenue distributed to the racetrack gaming facility manager from 25.0 percent to 75.4 percent. The bill would also create the Kansas Horse Council Fund which would receive 0.1 percent of the revenues collected in the south-central gaming zone 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 ELARF would be reduced from 40.0 to 22.0 percent; the current 3.0 percent share that is shared by local government would

be reduced 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 share going to the Live Greyhound Racing Purse Supplement Fund would be eliminated; the 7.0 percent share going to the Live Horse Racing Purse Supplement Fund would be eliminated; the 1.0 percent share going to the Kansas Horse Fair Racing Benefit Fund would be eliminated; and the 15.0 percent share of gaming revenues that is to be used for gaming expenses would also be eliminated.

The bill would change the distribution of net electronic gaming machine revenue from the racetrack gaming facility located in the southeast gaming zone that operates parimutuel horse racing by increasing the amount of revenue distributed to the racetrack gaming facility manager from 25.0 percent to 74.5 percent. To balance out this increase, a corresponding reduction in revenues is in the bill. The ELARF would be reduced from 40.0 to 22.0 percent; the current 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 share going to the Live Greyhound Racing Purse Supplement Fund would be eliminated; the 7.0 percent share going to the Live Horse Racing Purse Supplement Fund would be eliminated; the 1.0 percent share going to the Kansas Horse Fair Racing Benefit Fund would be eliminated; and the 15.0 percent share of gaming revenues that is to be used for gaming expenses would also be eliminated. The share going to local governments would remain unchanged at 3.0 percent.

Each horse racetrack would be required to conduct live or simulcast horse racing programs for at least 60 days each year in order to operate electronic gaming machines. The bill would require the official breed registering agency for horses that has been approved by the Kansas Racing and Gaming Commission, to make recommendations to the Commission each year on or before December 1, for the implementation of programs which would maximize the economic development benefits in rural Kansas. The bill would reduce the application fee from \$500 to \$50 for any fair association or horseman's nonprofit organization. The organization licensing fee would be reduced from \$100 to \$25 for each day of racing. 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 prohibit simulcast greyhound racing. The bill would make other technical corrections to the Kansas Expanded Lottery Act and the Kansas Parimutuel Racing Act.

SB 404 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 as horse only racetracks with electronic gaming machines. A contract could not be approved with Wichita Greyhound Park unless the voters of Sedgwick County first approve the operation of electronic gaming machines in an election. The expenses of conducting an election would be the responsibility of Sedgwick County. Previously, the Sedgwick County Election Commissioner

indicated that the costs associated with conducting an election could be as low as \$30,000 if the question is added to a general election ballot or as much as \$394,000 if a special mail ballot election is used that mails the ballot to each registered voter of the county including return postage. If a special election with polling places and early voting centers is used, then the cost is estimated to be \$211,300.

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. Conducting 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. The bill would only allow the lottery gaming facility manager in the south-central gaming zone to make a claim that the Sedgwick County revote is an expansion of gaming that is prohibited under the Kansas Expanded Lottery Act. The Kansas Lottery indicates that the other lottery gaming facility managers have signed contracts with the Kansas Lottery that expressly prohibit the state from designating additional areas of the state where operation of lottery gaming facilities or similar gaming facilities would be authorized. Authorizing historical horse race machines at parimutuel facilities may be interpreted as similar gaming facilities. The Kansas Expanded Lottery Act expressly required that prohibition, among others, to be included within all lottery gaming facility management contracts. Redefining similar gaming facilities to not include racetrack gaming facilities would not change the original contract language that could require the state to repay each lottery gaming facility manager their privilege fee paid plus accrued interest. Furthermore, the redistribution of electronic gaming machine revenues at parimutuel racetracks and changing of existing law related to signed contracts under the terms of the original Kansas Expanded Lottery Act may also trigger breach of contract and related claims by the existing lottery gaming facility managers, which could be in addition to the claims for refund of privilege fees and accrued interest. Lottery gaming facility managers entered into a contract with the state to manage lottery gaming facilities under a certain set of statutory and contractual terms. To have those terms changed mid-contract may result in litigation from lottery gaming facility 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 lottery gaming facility managers or if the damages would include any interest payments.

In the event that a lottery gaming facility manager is repaid its privilege fee and accrued interest, then the racetrack gaming facility manager (facility manager licensee for the racetrack facility) in the same gaming zone would be responsible for this payment; however, the racetrack gaming facility manager would be reimbursed for that payment amount to the lottery gaming facility manager out of the state's share of revenue from the racetrack gaming facility that would be distributed to the Expanded Lottery Act Revenues Fund. The racetrack gaming facility manager would only be responsible for the refund of the privilege fees and accrued interest from the lottery gaming facility manager in the same gaming zone; however, it is unclear who would be responsible for any additional monetary damages that could be awarded by the courts from additional lawsuits. A similar reimbursement procedure would also be in place for the facility manager licensee for the

racetrack facility that operates historical horse racing machines which would reimburse the privilege fee from parimutuel taxes that are deposited in the State Racing Fund.

The Attorney General's Office indicates the bill has the potential to significantly increase litigation costs starting in FY 2023. 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 bill has the potential for increasing litigation in the courts. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to estimate the number of additional court cases that would arise or how complex and time-consuming the cases would be. The fiscal effect would most likely be negligible and could be accommodated within the existing budget resources.

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 an 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.

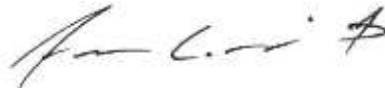
The Kansas Racing and Gaming Commission indicates it would need approximately \$1.8 million and 21.00 FTE positions for each parimutuel racetrack that reopens for the annual costs to regulate both the racing and gaming activities or racing and historical horse race machine operations. Start-up costs 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 are 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 the bill 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 404 is not reflected in *The FY 2023 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Keith Kocher, Lottery
Brandi White, Racing & Gaming Commission
Willie Prescott, Office of the Attorney General
Vicki Jacobsen, Judiciary
Leigh Keck, Aging & Disability Services
Wendi Stark, League of Municipalities
Jay Hall, Association of Counties