TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

CORRECTED FISCAL MEMORANDUM

HB 1 - SB 16

April 22, 2019

SUMMARY OF ORIGINAL BILL: Establishes a framework for sports gambling in the state of Tennessee. In order for sports gambling to be authorized in any local government in Tennessee, the respective legislative body would be required to adopt a resolution authorizing the respective county election commission to hold a referendum by special election or concurrently with a general election, on whether to allow sports gambling in the respective jurisdiction.

Creates the Tennessee Gaming Commission (Commission), consisting of nine non-legislative members. The Commission will meet at least quarterly. Members shall be provided a per diem and will be reimbursed for necessary travel expenses. The Commission is authorized to employ an executive director and staff, as necessary. The Commission shall be administratively attached to the Secretary of State's office.

In jurisdictions in which sports gambling has been approved by referendum, all individuals wishing to provide sports wagering will be required to apply with the Commission for a license and pay a nonrefundable, annual licensure fee of $7,500. In addition, a permit will be required of any employee of a licensee who accepts wagers by bettors or the payment of winnings to bettors. Such employees must apply with the Commission for a permit and pay a nonrefundable, annual permit fee of $250. Revenue from such fees shall be collected by the Commission and deposited to the State Treasurer in a separate account for the exclusive use of the Commission in carrying out its duties under this Act.

Establishes a 10 percent privilege tax to be imposed on the adjusted gross income collected by licensees. Defines "adjusted gross income" as the total money paid to a licensee as bets minus the total amount paid out to winning bettors over a specified period of time. Requires that the receipts of such tax be distributed in the following manner: 40 percent to the State Treasurer for deposit into the General Fund, to be appropriated for expenditures of the General Assembly; 30 percent to the State Treasurer for deposit into the General Fund, to be remitted annually to each Tennessee college of applied technology and community college in this state on a per capita basis, based on student population as determined by the Department of Revenue; and 30 percent to the State Treasurer for deposit into the General Fund, to be remitted monthly to each local government in this state on a per capita basis, as determined by population based on the last federal census.

This Act will take effect July 1, 2019.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue - $2,975,500/FY19-20/General Fund
$5,951,000/FY20-21/General Fund
Exceeds $5,951,000/FY21-22 and Subsequent Years/
General Fund

$2,231,600/FY19-20/TBR
$4,463,300/FY20-21/TBR
Exceeds $4,463,300/FY21-22 and Subsequent Years/TBR

Exceeds $412,500/FY19-20 and Subsequent Years/
Tennessee Gaming Commission

$3,600/FY19-20/TBI
$1,200/FY20-21 and Subsequent Years/TBI

Increase State Expenditures –
Exceeds $269,300/FY19-20/Tennessee Gaming Commission
Exceeds $259,500/FY20-21 and Subsequent Years/
Tennessee Gaming Commission

$975,200/FY19-20/Department of Revenue
$72,000/FY20-21 and Subsequent Years/
Department of Revenue

$3,600/FY19-20/TBI
$1,200/FY20-21 and Subsequent Years/TBI

Increase Local Revenue - $2,231,600/FY19-20/Permissive
$4,463,300/FY20-21/Permissive
Exceeds $4,463,300/FY21-22 and Subsequent Years/
Permissive

Other Fiscal Impact – This Act will result in additional jobs and consumption expenditures within the economy, both ultimately resulting in a recurring increase in sales tax revenue collected by state and local government. In addition, this Act will result in a shift in consumer spending from goods and services to sports gaming, including a shift in money spent on lottery tickets in Tennessee to sports gaming. The net shift in consumer spending from goods and services to sports gaming, or the impact on net lottery proceeds, cannot be reasonably determined. Due to multiple unknown factors, any applicable net impact on state and local tax revenue as a result of this Act cannot be reasonably quantified, but is considered to be positive.

In addition, there will be an unknown increase in the number of food and beverage licenses and permits issued, respectively, by state and local governing bodies. An increase in the number of issuances of such licenses and permits will result in additional state and local government tax revenue. Due to multiple unknown factors, any such additional state and local tax revenue cannot be reasonably quantified, but is considered to be positive.

To the extent a local government opts to hold a referendum not in conjunction with a regularly-scheduled primary or general election, there will be a permissive increase in local expenditures which will vary based on the size of the local government; however, any such permissive increase in expenditures is estimated to exceed $7,000.

SUMMARY OF AMENDMENT (007699): Deletes and rewrites all language after the enacting clause such that the substantive changes include:

- Restricts sports wagering to interactive sports wagering or online wagering;
- Removes ability to offer sports wagering through use of a kiosk;
- Renames the Tennessee Gaming Commission the Tennessee Education Lottery Corporation Sports Wagering Advisory Council (Council);
- Reduces the membership of the Council, from 9 member to 5 members;
- Prior to making an appointment to the Corporation, the Governor must submit the name of a potential member to the Tennessee Bureau of Investigation (TBI). Requires the potential member provide a set of fingerprints;
- Removes the Council's authority to employ staff;
- Increases the nonrefundable annual licensing fee, from $7,500 to $750,000, and requires upon each initial or renewal of licensure, a nonrefundable application fee of $50,000;
- Stipulates that for every application for licensure or renewal of a license that is approved by the board, the amount of the application fee must be credited towards the licensee's annual license fee and the licensee shall remit the balance of the annual fee to the corporation upon approval of a license;
- Fees collected from licensees must be used by the corporation to pay the actual operating and administrative expenses they incur;
- Deletes the requirement that each employ of a license hold a permit and concurrently, pay a $250 permit fee;
- Requires the Corporation and Board to enforce this act and supervise compliance with laws and rules relating to the regulation and control of wagering on sporting events in Tennessee;
- Adds the definition of "official league data";
- Expands the definition of "sporting event" to include motorsports and e-sports;
- Expands the definition of "wager" or "bet" to include pari-mutuel betting;
- Increases the privilege tax imposed by this Act, from 10 percent to 20 percent;

- Stipulates that 80 percent of privilege tax proceeds be distributed in the Lottery for Education Account; 15 percent be distributed to each local government in the state on a per capita basis, as determined by population; and 5 percent shall be distributed by the Corporation for use by the Department of Mental Health and Substance Abuse Services to develop programs for gambling addicts.
- Requires that the funds distributed to such local governments be used for local infrastructure projects, including, without limitation, transportation and road projects and public buildings.
- Requires a licensee to exclusively use official league data for purposes of live betting;
- If a licensee can demonstrate to the Commission that such governing body of a sport or sports league or organization, or association cannot successfully provide a feed of official league data for official live betting, a licensee may use any data source that is not obtained either directly or indirectly from live, authorized sporting event attendees who collect the data in violation of the terms of admittance to the event or through automated computer programs that compile data from the internet in violation of the terms of service of the relevant website or other internet platform;
- Authorizes a bettor to remotely register with a licensee for the purpose of betting via interactive sports wagering, rather than being required to register in-person;
- Effectively legalizes interactive sports wagering or online sports wagering statewide without the requirement to be located in a jurisdiction having approved sports wagering via special referendum; and
- Requires licensees to implement commercially and technologically reasonable procedures to prevent access to sports wagering by those, including minors, who are prohibited from participating in sports wagering on its interactive platforms.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

On April 9, 2019, a fiscal memorandum was issued estimating the following fiscal impact:

Increase State Revenue - $20,371,000/FY19-20/
Lottery for Education Account
$40,742,100/FY20-21/
Lottery for Education Account
Exceeds $40,742,100/FY21-22 and Subsequent Years/
Lottery for Education Account

$1,273,200/FY19-20/Department of Mental Health and Substance Abuse Services
$2,546,400/FY20-21/Department of Mental Health and Substance Abuse Services
Exceeds $2,546,400/FY21-22 and Subsequent Years/Department of Mental Health and Substance Abuse Services

Exceeds $240,700/FY19-20/
Board of Directors of the Lottery Corporation
Exceeds $230,900/FY20-21 and Subsequent Years/
Board of Directors of the Lottery Corporation

$8,309,300/FY19-20/
Tennessee Promise Scholarship Endowment Fund
$8,169,100/FY20-21 and Subsequent Years/
Tennessee Promise Scholarship Endowment Fund

$1,100/FY19-20/TBI
$300/FY20-21 and Subsequent Years/TBI

Increase State Expenditures –
Exceeds $14,700/FY19-20 and Subsequent Years/
Lottery Corporation Gaming Advisory Council

Exceeds $240,700/FY19-20/
Board of Directors of the Lottery Corporation
Exceeds $230,900/FY20-21 and Subsequent Years/
Board of Directors of the Lottery Corporation

$975,200/FY19-20/Department of Revenue
$72,000/FY20-21 and Subsequent Years/
Department of Revenue

$1,100/FY19-20/TBI
$300/FY20-21 and Subsequent Years/TBI

Increase Local Revenue - $3,819,600/FY19-20/Permissive
$7,639,100/FY20-21/Permissive
Exceeds $7,639,100/FY21-22 and Subsequent Years/
Permissive

Other Fiscal Impact – This Act will result in additional jobs and consumption expenditures within the economy, both ultimately resulting in a recurring increase in sales tax revenue collected by state and local government. In addition, this Act will result in a shift in consumer spending from goods and services to sports gaming, including a shift in money spent on lottery tickets in Tennessee to sports gaming. The net shift in consumer spending from goods and services to sports gaming, or the impact on net lottery proceeds, cannot be reasonably determined. Due to multiple unknown factors, any applicable net impact on state and local tax revenue as a result of this Act cannot be reasonably quantified, but is considered to be positive.

Based upon further review, it has been determined that such impact is in error. The assumptions and bold impact has been corrected. Based upon such corrections, the fiscal impact is estimated to be:

(CORRECTED)
Increase State Revenue - $20,371,000/FY19-20/
Lottery for Education Account
$40,742,100/FY20-21/
Lottery for Education Account
Exceeds $40,742,100/FY21-22 and Subsequent Years/
Lottery for Education Account

$1,273,200/FY19-20/Department of Mental Health and Substance Abuse Services
$2,546,400/FY20-21/Department of Mental Health and Substance Abuse Services
Exceeds $2,546,400/FY21-22 and Subsequent Years/Department of Mental Health and Substance Abuse Services

Exceeds $14,700/FY19-20 and Subsequent Years/
Tennessee Education Lottery Corporation
Sports Wagering Advisory Council

Exceeds $240,700/FY19-20/
Board of Directors of the Lottery Corporation
Exceeds $230,900/FY20-21 and Subsequent Years/
Board of Directors of the Lottery Corporation

$8,894,700/FY19-20/
Tennessee Promise Scholarship Endowment Fund
$8,754,500/FY20-21 and Subsequent Years/
Tennessee Promise Scholarship Endowment Fund

$1,100/FY19-20/TBI
$300/FY20-21 and Subsequent Years/TBI

Increase State Expenditures –
Exceeds $14,700/FY19-20 and Subsequent Years/
Tennessee Education Lottery Corporation
Sports Wagering Advisory Council

Exceeds $240,700/FY19-20/
Board of Directors of the Lottery Corporation
Exceeds $230,900/FY20-21 and Subsequent Years/
Board of Directors of the Lottery Corporation

$1,100/FY19-20/TBI
$300/FY20-21 and Subsequent Years/TBI

Increase Local Revenue - $3,819,600/FY19-20/Permissive
$7,639,100/FY20-21/Permissive
Exceeds $7,639,100/FY21-22 and Subsequent Years/ Permissive

Other Fiscal Impact – This Act will result in additional jobs and consumption expenditures within the economy, both ultimately resulting in a recurring increase in sales tax revenue collected by state and local government. In addition, this Act will result in a shift in consumer spending from goods and services to sports gaming, including a shift in money spent on lottery tickets in Tennessee to sports gaming. The net shift in consumer spending from goods and services to sports gaming, or the impact on net lottery proceeds, cannot be reasonably determined. Due to multiple unknown factors, any applicable net impact on state and local tax revenue as a result of this Act cannot be reasonably quantified, but is considered to be positive.

Corrected assumptions for the bill as amended:

State and Local Revenue – Sports Gaming

- This Act imposes a 20 percent privilege tax on adjusted gross income, also known as gross gaming revenue (GGR). Revenue from this tax is required to be allocated in the following ways:
    - 80 percent to the Lottery for Education Account; and
    - 15 percent local government in the state on a per capita basis, as determined by population; and
    - 5 percent to the Department of Mental Health and Substance Abuse Services (DMHSAS) to develop programs and treatment for gambling addicts.
- For purposes of estimating gaming revenue and consequentially, additional state tax revenue that will be collected as a result of the proposed privilege tax, the 2017 study by Oxford Economics entitled "Economic Impact of Legalized Sports Betting," was considered. This study was commissioned by the American Gaming Association.
- This Act restricts participation in sports gaming to individuals who are 21 years of age or older.
- Based on the information from the U.S. Census Bureau (2017), there are approximately 4,959,180 residents in Tennessee who are 21 years of age or older.
- This legislation authorizes interactive sports wagering or online sports wagering online statewide. Geofencing will trigger a bettor's geographic location and determine whether the individual is in the state, and therefore, be authorized to participate in sports wagering.

- According to the Department of Tourist Development (DTD), in FY17-18 approximately 116.1 million people visited Tennessee, of which approximately 94.1 million were leisure visitors.
- Approximately 75 percent of the 94.1 million people were 21 years of age or older, or 70,575,000 (94,100,000 x 75%) would be legal to engage in interactive sports wagering or online sports wagering statewide or at a professional sports stadium, arena, complex, or speedway, or at the location of a sports book, upon registering at the location of such sports book or kiosk.
- It is estimated that 5 percent of the 70,575,000 people, or 3,528,750 people (70,575,000 x 5%) will engage in sports wagering annually while visiting Tennessee.
- Based on the Oxford Economics study and adjusting for moderate access to high speed internet in Tennessee and the expected ramp-up period for the sports gambling industry after enactment of this legislation, the annual GGR per adult is estimated to be $30.
- A total annual GGR of $254,637,900 [(4,959,180 + 3,528,750) x $30].
- Due to the effective date of this legislation, it is assumed that sports gaming will not commence and be available to bettors until January 1, 2020; therefore, the GGR in FY19-20 is estimated at 50 percent of the first-year GGR.
- A total annual GGR in FY19-20 of $127,318,950 ($254,637,900 x 50%).
- An increase in state revenue to the Lottery for Education Account in FY19-20 of $20,371,032 ($127,318,950 x 20% tax x 80% allocation).
- An increase in state revenue to the DMHSAS in FY19-20 of $1,273,190 ($127,318,950 x 20% tax x 5% allocation).
- A permissive increase in local tax revenue in FY19-20 of $3,819,569 ($127,318,950 x 20% tax x 15% local allocation).
- A total annual GGR in FY20-21 of $254,637,900.
- An increase in state revenue to the Lottery for Education Account in FY20-21 of $40,742,064 ($254,637,900 x 20% tax x 80% allocation).
- An increase in state revenue to the DMHSAS in FY20-21 of $2,546,379 ($254,637,900 x 20% tax x 5% allocation).
- A permissive increase in local tax revenue in FY20-21 of $7,639,137 ($254,637,900 x 20% tax x 15% local allocation).
- A total annual GGR in FY21-22 and subsequent years exceeding $254,637,900.
- An increase in state revenue to the state Lottery for Education Account in FY21-22 and subsequent years exceeding $40,742,064 ($254,637,900 x 20% tax x 80% allocation).
- An increase in state revenue to the DMHSAS in FY21-22 and subsequent years exceeding $2,546,379 ($254,637,900 x 20% tax x 5% allocation).
- A permissive increase in local tax revenue in FY21-22 and subsequent years exceeding $7,639,137 ($254,637,900 x 20% tax x 15% local allocation).

State Revenue – Licenses and Permits

- This Act requires that businesses seeking to provide sports gambling services to first be issued a license from the 'board."
- This legislation does not explain to which "board" it references, but is assumed to refer to the Board of Directors of the Lottery Corporation (Board), found in Tenn. Code Ann. Title 4, Chapter 51.

- An annual, nonrefundable licensure fee of $750,000.
- Requires that for each initial and renewal issuance of a license, an applicant must pay a nonrefundable application fee of $50,000.
- If the applicant is successful, the $50,000 application fee shall offset an equal portion of the cost of the $750,000 licensure fee, so successful applicants will effectively pay a net $700,000 per each initial or renewal period.
- It is assumed that there will be 15 applicants initially in FY19-20 and an average of 12 applicants and licenses in FY20-21 and subsequent years.
- Application and licensure fee revenue must be used by the Board to pay the actual operating and administrative expenses incurred. Any fee revenue remaining after expenses of the Board have been offset, must be distributed to the State Treasurer for deposit into the Tennessee Promise Scholarship Endowment fund, created by Tenn. Code Ann. § 49-4-708(d).
- In FY19-20, application and licensure fee revenue of $9,150,000{[($50,000) x 3 unsuccessful applicants] + ($750,000 x 12 successful applicants)}.
- In FY20-21 and subsequent years, application and licensure fee revenue of $9,000,000 ($750,000 x 12 licensees).

National Criminal Background Checks

- This legislation requires that each person listed as a principal owner, partner, member of a board of directors, officer, or supervisory employee includes with their license or permit application a national criminal background check.
- In addition all five Council member appointees of the Governor will need to undergo a national criminal background check.
- National criminal background checks cost a total of $32.65, to be paid by each applicant.
- The disbursement of this fee and the related impacts are as follows:
    - Tennessee Bureau of Investigation (TBI): $12;
    - Federal Bureau of Investigation (FBI): $12; and
    - Applicable vendor: $8.65.
    - It is assumed that there will be an average of six individuals required to undergo a background check per each licensee in the initial year and approximately two individuals per licensee, on average, for all subsequent years.
    - An increase in state revenue to the TBI of $1,140 in FY19-20 {[5 appointees + (15 applicants x 6 background checks)] x $12 disbursement}.
    - An increase in state revenue to the TBI of $288 in FY20-21 and subsequent years (12 applicants x 2 background checks x $12 disbursement).
    - It is assumed that the cost for TBI to perform such background checks offsets equally with the revenue collected to perform them.
    - An increase in state expenditures to the TBI of $1,140 in FY19-20.
    - A recurring increase in state expenditures to the TBI of $288 in FY20-21 and subsequent years.

Expenditures - Board of Directors of the Lottery Corporation

- The Board will hire a minimum of three employees: one executive director, one budget analyst, and one executive assistant to aid in meeting the Board's requirements.

- A recurring increase in state expenditures estimated to exceed $230,853 (salary $167,500 + benefits $36,739 + FICA $12,814 + office lease $6,600 + phone/network $5,400 + supplies $1,800); and one-time state expenditures estimated to exceed $9,800 (office furniture $6,000 + computers $3,800).
- A total increase in state expenditures exceeding $240,653 ($230,853 + $9,800) in FY19-20 and exceeding $230,853 in FY20-21 and subsequent years.
- These expenditures will be paid by the Commission with revenue collected through licensure and permit fees.

Expenditures – Tennessee Education Lottery Corporation Sports Wagering Advisory Council

- The Council will be comprised of five non-legislative members. The Governor will appoint all five members.
- Meetings are required to be held at least quarterly.
- Members will meet once per month, or 12 times per year.
- Members will be provided per diem and reimbursement for travel expenses.
- Meetings will take place in Nashville.
- Three of the five members, each residing in either the East or West Grand Division, will receive reimbursement for lodging ($170) and travel ($139), for a total of $309 per meeting ($170 + $139).
- All nine members will receive reimbursement for meals and incidentals ($59)
- Travel expenses for 12 annual meetings will total $14,664 {12 meetings x [($309 x 3 members) + ($59 x 5 members)].
- A total recurring increase in state expenditures exceeding $14,664 in FY19-20 and subsequent years.
- These expenditures will be paid by the Council with revenue collected through licensure fees.

*Allocations to the Tennessee Promise Scholarship Endowment Fund (*TPSEF*)*

- In FY19-20, the remaining amount of application and fee revenue after expenses of the Corporation have been accounted for, which will be distributed to the TPSEF, is estimated to be $8,894,683 ($9,150,000 - $240,653 - $14,664).
- In FY20-21 and subsequent years, the remaining amount of application and fee revenue after expenses of the Corporation have been accounted for, which will be distributed to the TPSEF, is estimated to be $8,754,483 ($9,000,000 - $230,853 - $14,664).

Secondary Impacts

- There will be secondary impacts associated with this Act. Such impacts are estimated to include but not be limited to a net increase in jobs created by the sports gaming industry, as well as additional purchases made by bettors at sports gaming locations, both of which will result in additional sales tax revenue collected by state and local government. Due to multiple unknown factors, any increase in sales tax revenue as a result of this Act cannot be reasonably quantified, but is considered to be positive.
- In addition, this Act will result in a shift in spending from goods and services to sports gaming, including a shift from spending on lottery tickets in Tennessee to sports gaming.

- The net shift in spending from goods and services to sports gaming, or the impact on net lottery proceeds, cannot be reasonably determined.
- Under current law, pursuant to Tenn. Code Ann. § 39-17-504(c), the offense of aggravated gambling promotion is a Class E felony. The proposed Act removes lawfully accepting or placing a wager on a sporting event in accordance with the Act from the definition of gambling under this part. However, any decrease in state or local incarceration expenditures is estimated to be not significant.
- The Act creates multiple misdemeanor offenses for specific violations of the Act.
- There will not be a sufficient number of prosecutions for state or local government to experience any significant increase in revenue or expenditures associated with such offenses.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner

Krista Lee Carsner, Executive Director

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