TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

SB 475 - HB 1362

March 22, 2023

SUMMARY OF BILL AS AMENDED (005987, 006313): Removes the requirement that sportsbook operators, or licensees, must pay a privilege tax of 20 percent of their monthly adjusted gross income (AGI). Requires licensees to pay a 1.85 percent monthly privilege tax on total gross wagers less cancelled or voided wagers. Prohibits licensees from deducting payouts to bettors or promotional wagers or payouts from total gross wagers. Authorizes a licensee to deduct the amount of federal excise tax paid each month from its gross handle.

Revises and adds various provisions and definitions related to the Sports Wagering Advisory Council (SWAC) and sports wagering regulations. Renames the SWAC as the Sports Wagering Council (SWC). Revises certain provisions related to applications, licenses, fees, and penalties. Authorizes the SWC to carry forward fine revenue available at the end of the year for administrative purposes. Revises provisions specific to record keeping and inspections for licensees and registrants. Requires SWC to post the categories of persons who are ineligible to place a wager on its website.

Authorizes vendors to register every three years instead of annually. Sets the three-year vendor registration fee at $150,000, with $50,000 due at registration, $50,000 due on the first anniversary of registration, and $50,000 due on the second anniversary of registration. Establishes that for the second or subsequent period of registration, vendor registration fee will be in an amount set by rule of the SWC, sufficient to defray the operating and administrative expenses of the SWC.

Revises the application and licensing fees for operators, from a nonrefundable application fee of $50,000 and an annual licensing fee of $750,000, to the same for the first year of licensure and to the following for the second or subsequent year of licensure, but prior to June 30, 2025: for licensees receiving $100,000,000 or more in gross wagers in the immediately preceding 12-month period, $750,000; for licensees receiving less than 100,000,000 or more in gross wagers in the immediately preceding 12-month period, $375,000. Requires the SWC to promulgate rules effective July 1, 2025, to set license fees sufficient to defray the operating and administrative expenses of the SWC.

FISCAL IMPACT OF BILL AS AMENDED:

Increase State Revenue –
$1,364,700/FY23-24 and Subsequent Years/Lottery for Education Account
$85,300/FY23-24 and Subsequent Years/
Department of Mental Health and Substance Abuse Services

Decrease State Revenue – $1,112,000/FY23-24 and Subsequent Years/
Sports Wagering Council
Exceeds $13,000/FY23-24 and Subsequent Years/
Tennessee Promise Scholarship Endowment Fund

Increase Local Revenue – $255,900/FY23-24 and Subsequent Years

Other Fiscal Impact – The proposed legislation requires the Sports Wagering Council to adjust the vendor registration and operator license fee structures by rule, by July 1, 2023, and July 1, 2025, respectively. To the extent the council revises the fee structure, estimated impacts to the council revenue may differ.

Assumptions for the bill as amended:

Privilege Tax Calculations

- Pursuant to Tenn. Code Ann. § 4-49-104(b), licensees are required to pay a monthly privilege tax of 20 percent of the licensee's AGI.
- The proposed legislation removes the AGI privilege tax and replaces it with a two percent privilege tax on total gross wagers, less cancelled or voided wagers.
- Based on information provided by SWC, total wagers reported in 2022, less cancelled or voided wagers, were $3,778,689,080. Total payouts were $3,440,010,177; therefore, the total AGI in 2022 among licensees was $338,678,903 ($3,778,689,080 - $3,440,010,177).
- Pursuant to SWC Rule 1350-01-.09, licensees must generate a monthly AGI that is 10 percent of the licensee's gross wagers. If licensees fail to generate the required AGI, they are required to pay either a "true-up" payment at the end the year, to bring their annual privilege tax payments to be 20 percent of 10 percent, or 2 percent, of a licensee's gross wagers, or a $25,000 fine.
- In 2022, 9 of the 11 active and registered licensees did not generate an AGI that is 10 percent of the licensee's gross wagers. For the purposes of this analysis it is assumed all 9 licensees will choose to pay the $25,000 fine instead of the "true-up" payment, as all licensees who did not generate an AGI of 10 percent of the licensee's gross wagers did in 2021.
- According to the SWC, the total collections in 2022 were $68,025,146; for the purposes of this analysis, this number is held constant into perpetuity.
- The proposed legislation takes out all references to AGI and requires a licensee to pay 1.85 percent of their gross wagers every month.

- The federal excise tax is 0.25 percent; therefore, excise tax collections on total gross wagers less cancelled or voided wagers were $9,446,723 ($3,778,689,080 x 0.25%) in 2022; for the purposes of this analysis, this number is held constant into perpetuity.
- This will reduce total gross wagers less cancelled or voided wagers subject to the two percent privilege tax to $3,769,242,357 ($3,778,689,080 - $9,446,723); therefore, after accounting for the deduction of the federal excise tax, all licensees would have paid $69,730,984 ($3,769,242,357 x 1.85%) in 2022; for the purposes of this analysis, this number is held constant into perpetuity.
- The recurring increase in state revenue in FY23-24 and subsequent years is estimated to be $1,705,838 ($69,730,984 - $68,025,146).
- Pursuant to Tenn. Code Ann. § 4-49-104(e), distributions of the privilege tax are as follows:
    - 80 percent to the Lottery for Education Account (LEA);
    - 15 percent to the local government; and
    - 5 percent to the Department of Mental Health and Substance Abuse Services (DMHSAS).
- Therefore, the proposed legislation will result in the following recurring increases in revenue, beginning in FY23-24:
    - $1,364,670 ($1,705,838 x 80%) to the LEA;
    - $255,876 ($1,705,838 x 15%) to the local government; and
    - $85,292 ($1,705,838 x 5%) to the DMHSAS.

Background Check, License Fees, and Registration Cost

- In FY21-22, 21 licensees registered with SWC.
- The proposed legislation would extend a license registration to three years, thereby allowing registrants to re-register every three years instead of every year.
- Based on information from SWC it is estimated that at least three new licensees will register with SWC every year.
- Considering the 21 current licensees will be required to pay the registration fee under the proposed legislation, it is estimated 30 licensees will pay a registration fee in the first three years following the implementation of the proposed legislation; for the purposes of this analysis, this number will be held constant into perpetuity.
- The proposed legislation sets a registration fee payment schedule that is effectively $50,000 each year; therefore, the increase in state revenue from registration fees is estimated to be $4,500,000 ($50,000 x 30 x 3) in the first three years following implementation of the proposed legislation.
- For the purposes of this analysis, the annual increase in state revenue is estimated to be $1,500,000 ($4,500,000 / 3 years) in FY23-24 and subsequent years.
- Any decrease in workload resulting from less frequent registrations will not result in a significant decrease in state expenditures.
- According to SWC, $13,000 in fine revenue was collected in FY21-22 by the Tennessee Education Lottery (TEL). This money will be carried forward for administrative expenditures of the SWC as a result of this legislation. Based on information provided by the SWC, it is assumed that such fine collections are currently allocated to the Tennessee Promise Scholarship Endowment Fund.

- The total recurring increase in revenue to the SWC is estimated to be $1,513,000 ($1,500,000 + $13,000).
- The proposed legislation changes the current $750,000 license fee by tiering the fee based on total wagers, except for the first year of licensure; therefore, the effective license fee in second and subsequent years of licensure is $750,000 for licensees receiving $100,000,000 or more in gross wagers annually and $375,000 for licensees receiving less than $100,000,000 in gross wagers annually.
- Based on information provided by SWC, the recurring decrease in revenue associated with licensing fees is estimated to be $2,625,000, beginning in FY23-24.
- Pursuant to Tenn. Code Ann. § 4-49-117(f) and (g), fees collected from licensees must be used by SWC to pay the actual operating and administrative expenses. The remainder of such fees is to be distributed to the State Treasurer for deposit into the Tennessee Promise Scholarship Endowment Fund.
- The net recurring decrease in revenue to the SWC is estimated to be $1,112,000 ($2,625,000 - $1,513,000).
- The SWC reports that $2,242,940 was transferred pursuant to Tenn. Code Ann. § 4-49-117(f) and (g) in FY21-22. However, such transfer reflects operations of the SWC in its infancy and is not reflective of the current operations of the SWC.
- Based on information provided by the SWC, annual expenditures on items such as salaries, technology, training, and programming needs have increased and are expected to continue increasing over the next few years; therefore, the amount transferred pursuant to Tenn. Code Ann. § 4-49-117(f) and (g) is expected to significantly decrease, in the absence of the proposed legislation.
- It is assumed that a majority of the transfer would be depleted under current law, due to increased operational costs of the SWC. Therefore, the recurring decrease in revenue to the Tennessee Promise Scholarship Endowment Fund is estimated to exceed $13,000, beginning in FY23-24, which reflects the fine revenue that will be retained by the SWC pursuant to this legislation.

CERTIFICATION:

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

Krista Lee Carsner, Executive Director

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