LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 13, 2021

TO: Honorable Chris Paddie, Chair, House Committee on State Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB2070** by Huberty (Relating to the regulation of sports wagering; requiring an occupational permit; authorizing a fee; imposing a tax; creating criminal offenses; decriminalizing wagering on sports events.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2070, As Introduced : a positive impact of $38,184,075 through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

Note: The tax limitation provided by proposed Sec. 2005.252 is ambiguous, as it could serve as the basis of claiming exemption of a taxable entity that holds a license as a sports wagering operator from general taxes that are not imposed by reason of the license.

General Revenue-Related Funds, Five- Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to *General Revenue Related Funds*
2022	$8,286,558
2023	$29,897,517
2024	$37,710,517
2025	$45,569,517
2026	$48,061,517

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *General Revenue Fund* 1	Probable Revenue Gain from *General Revenue Fund* 1	*Change in Number of State Employees from FY 2021*
2022	($2,317,442)	$10,604,000	13.0
2023	($1,352,483)	$31,250,000	13.0
2024	($1,352,483)	$39,063,000	13.0
2025	($1,352,483)	$46,922,000	13.0
2026	($1,352,483)	$49,414,000	13.0

Fiscal Analysis

The bill would add Chapter 2005. Sports Wagering, to the Occupations Code, to be cited as the Texas Sports and Entertainment Recovery Act. The bill would require the Texas Department of Licensing and Regulation (TDLR) and the Texas Commission of Licensing and Regulation (Commission) to regulate the state's sports wagering program, including issuing permits to interactive sports wagering operators. The bill would require the Commission to certify sports wagering revenues and expenses to the Comptroller of Public Accounts (Comptroller) on a monthly basis, and within thirty days of the end of the fiscal year provide to the Comptroller a full and complete statement of sports wagering revenues and expenses for that fiscal year. The bill would authorize the Commission and the Comptroller to audit the records of sports wagering operators. The bill would require the Commission to establish a statewide voluntary self-exclusion program and host a website that sport wagering operators may link to in order to allow individuals to register for self-exclusion. The bill would require the Commission to adopt rules governing the establishment of a sports wagering public accommodation at a sports facility or sports entertainment district. The bill would require the Commission to cooperate with investigations conducted by sports governing bodies or law enforcement agencies related to persons placing wagers.

The bill would impose a tax of ten percent on the sports wagering operator's adjusted gross revenue to be remitted to the Comptroller monthly to be dedicated to providing special education and related services to eligible students in addition to and as a supplement to the funding provided under the Texas Education Code. The bill would require that any taxes collected from sports wagering and any fees collected in excess of what TDLR and the Commission need to regulate sports wagering shall be dedicated to providing special education and related services to eligible students in addition to and as a supplement to funding provided under the Texas Education Code, Sec. 48.102, with recommendations for the use of the supplemental funds provided by the special education allotment advisory committee.

Under the provisions of the bill, a sports wagering operator may not be subject to an excise tax, license tax, privilege tax, amusement tax, sales tax, or occupation tax that is imposed upon licensees by the state or any political subdivision of the state, except as provided by the bill.

The bill would create three new criminal offenses and a civil penalty related to sports wagering. The bill would amend the Penal Code as it relates to gambling to expand the definition of bet and would make other conforming changes to the Penal Code.

The bill would take effect January 1, 2022 if the constitutional amendment authorizing the legalization of sports betting is approved by voters.

Methodology

According to TDLR, the agency would need an additional 13.0 full-time equivalent (FTE) positions to implement the provisions of the bill. These FTEs would be responsible for the monthly and annual reports on sports wagering revenue and expenses, auditing the books and records of sports wagering operators, drafting required rules, development of the required monitoring program, responding to contacts from the public and answering questions about the voluntary exclusion program, act as the agency's liaison with permit holders, provide sports wagering operators with lists of persons who are excluded from placing wagers, inspections of places of public accommodation which provide access to sports wagering platforms, maintaining the website for the self-exclusion list, and contracting with the third-party vendors that will perform other duties related to implementing the provisions of the bill. According to TDLR, all FTEs hired to regulate sports wagering would not start before the beginning of December 2021 at the earliest. The cost for the 13.0 FTEs would be $1,666,442 from General Revenue Funds in the first year for salary, benefits, computer equipment, and operating expenses, and $1,352,483 from General Revenue Funds for each year afterward for salary, benefits, and operating expenses.

According to TDLR, the agency would need one-half year of IT staff augmentation at a cost of $100,000 to General Revenue to build and launch the statewide self-exclusion list in fiscal year 2022.

Applicants for a permit as a sports wagering operator will be required to undergo an extensive and thorough background and qualification vetting process. TDLR reports it does not have personnel with the necessary expertise to perform these evaluations and would contract with a company that performs these types of reviews for other jurisdictions. Based on information provided by TDLR, this analysis assumes all service provider applicants would have been approved by at least one of the 15 states that has online sports wagering or 25 states that has retail sports wagering and would not require further review. Based on information provided by TDLR, this analysis assumes the cost of the contractor to report to TDLR the previous approvals of some applicants would be nominal and that approximately 25 applicants will require the extensive background check at an hourly cost of $240 per hour, which would result in a cost of $480,000 from General Revenue Funds in fiscal year 2022.

TDLR reports the agency does not have the expertise to perform the necessary testing of the interactive sports wagering platforms of applicants and permitted operators. According to TDLR, the agency would contract with a third-party to perform the required testing. Implementation of these provisions of the bill would result in no cost to the state.

The bill specifies permit fees are $500,000 for an initial interactive sports wagering operator permit and $100,000 for a renewal, $50,000 for an initial retail operator permit and $25,000 for a renewal, and $25,000 for an initial service provider permit and $10,000 for a renewal.

The estimated revenue shown in the table above is the Comptroller's estimate from the tax on sports wagering operators and revenue from permit fees. According to the Comptroller, because the bill does not require the revenue to be deposited into a specific fund, trust fund, or special account not in the general revenue fund, it is assumed the revenue will be deposited into the General Revenue Fund to be dedicated to providing special education and related services to eligible students in addition to and as a supplement to the funding provided under the Texas Education Code.

According to the Comptroller, implementation of the bill's provisions would result in a technology cost of $651,000 from General Revenue Funds in fiscal year 2022 for programming services. The Comptroller reports an estimated 4,340 hours are required for changes to mainframe, web and supporting systems. The Comptroller will also need to provide programming for reporting, collections, billings, refunds and tax payments through electronic means.

According to the Comptroller, although creating a new offense could potentially result in an increase in revenue due to fines, costs, or fees associated with an offense, the extent to which creating a new offense would impact revenue cannot be estimated. According to the Comptroller, although creating a civil penalty could potentially result in an increase in revenue, the impact to state revenue cannot be estimated.

The Lottery Commission anticipates that, if sports wagering is legalized and passed by voters, increased gaming competition could result in a decline in lottery sales revenue as well as gross annual receipts for charitable bingo. This decline in lottery sales would lead to less money being transferred to the Foundation School Fund (FSF) and the Fund for Veterans' Assistance. Reductions in bingo's gross annual receipts could impact both the agency's bingo program and certain local governments given that both are remitted bingo prize fees.

Technology

According to TDLR, the agency would need one-half year of IT staff augmentation at a cost of $100,000 to General Revenue to build and launch the self-exclusion platform.

Local Government Impact

The offense created by the bill would be a Class B misdemeanor. A Class B misdemeanor is punishable by a fine of not more than $2,000, confinement in jail for a term not to exceed 180 days, or both. Costs associated with enforcement, prosecution and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

No significant fiscal impact to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 362 Texas Lottery Commission, 452 Dept of License & Reg

LBB Staff: JMc, SMAT, MB, DFR, AF