



Bill Analysis

*John S. VanNorman
William J. Heaphy, III*

Legislative Service Commission

Sub. S.B. 99*

125th General Assembly

(As Reported by S. State & Local Government & Veterans Affairs)

Sen. Blessing

BILL SUMMARY

- Enacts several statutory requirements concerning (1) the State Lottery Commission's operation of lotteries using electronic gaming devices at no more than seven licensed commercial horseracing tracks and (2) the use of the net proceeds of those lotteries for school building construction and college scholarships for certain eligible Ohio high school graduates--all of which will take effect only if a specified proposal to amend Section 6 of Article XV of the Ohio Constitution to permit those lotteries is approved by the electors of the state at a special election to be held on March 2, 2004.
- Enacts provisions concerning the General Assembly's prescription of the title and ballot language for, and the designation of individuals to prepare arguments for and against, that proposal.
- Requires the Director of the State Lottery Commission to license holders of permits issued under the Horse Racing Law as electronic lottery sales agents, establishes licensure requirements, and provides for license renewal every five years.
- Requires the Commission to execute renewable agreements with these agents that provide for the distribution of the gross proceeds and the net proceeds of the lotteries in certain ways and that contain other specified provisions.

** This analysis was prepared before the report of the Senate State and Local Government and Veterans Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Requires the Commission to perform specified actions in conducting the lotteries, including the operation of all electronic gaming devices and of an on-line central communications system that provides security, auditing, and data and information retrieval.
- Establishes the responsibilities of electronic lottery sales agents.
- Requires the Commission to adopt rules addressing specified topics concerning the conduct of lotteries using electronic gaming devices.
- Precludes the Commission from conducting keno and specified live casino table games, but authorizes it to conduct lotteries replicating them by electronic gaming devices.
- Prohibits the assessment on or collection from an agent of a license or excise tax or fee by any political subdivision by reason of the conduct of lotteries using electronic gaming devices at tracks.
- Creates the Ohio Scholarship Program to provide specified scholarships for eligible Ohio high school graduates who meet certain academic standards and enroll in specified institutions of higher education in the state.
- Creates the Ohio Learn and Earn Scholarship Program to provide specified scholarships to high school graduates who reach certain academic, college preparedness, extracurricular activity, work experience, community service, and volunteer service achievements and enroll in specified institutions of higher education in the state.
- Requires the Board of Regents to adopt rules necessary for implementing the Ohio Scholarship Program and the Ohio Learn and Earn Scholarship Program.
- Requires the initial 5% or \$25 million of the net proceeds from the lotteries using electronic gaming devices to be used solely for school building construction for elementary, secondary, vocational, and special education programs.
- Requires the remaining net proceeds from the lotteries using electronic gaming devices to be used to fund Ohio Scholarship Program scholarships, with specified amounts of money remaining after the

funding of those scholarships to be used to fund Ohio Learn and Earn Scholarship Program scholarships.

- Requires 1/2% of the gross proceeds from the lotteries using electronic gaming devices to be used by the Department of Alcohol and Drug Addiction Services for the treatment and prevention of problem gambling.

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CONTENT AND OPERATION

Overview

The bill enacts several statutory requirements concerning the State Lottery Commission's operation of lotteries using electronic gaming devices at no more than seven licensed commercial horseracing tracks. A portion of the proceeds of these lotteries is to be used (1) for school building construction for elementary, secondary, vocational, and special education programs, (2) to fund Ohio Scholarship Program scholarships, which are renewable specified scholarships for eligible Ohio high school graduates who meet certain academic standards and enroll in specified institutions of higher education in the state, and (3) Ohio Learn and Earn Scholarship Program scholarships, which are renewable specified scholarships for Ohio high school graduates who reach certain academic, college preparedness, extracurricular activity, work experience, community service, and volunteer service achievements and enroll in specified institutions of higher education in the state.

The bill also sets forth several provisions concerning the ballot question for, and the preparation of arguments for and against, a separate but fundamentally related proposal to amend Section 6 of Article XV of the Constitution of the State of Ohio set forth in Substitute Senate Joint Resolution 8 of the 125th General Assembly.¹ The bill's amendments and enactments concerning the lotteries using electronic gaming devices cannot operate unless Substitute Senate Joint Resolution 8's proposal is approved by the electors of the state at a special election to be held on March 2, 2004 (sec. 3770.22).

Operation of lotteries using electronic gaming devices

Definitions

The bill defines the following terms for purposes of the operation of lotteries using electronic gaming devices at horseracing tracks (R.C. 3770.21):

¹ *Substitute Senate Joint Resolution 8, if approved, will amend Section 6 of Article XV of the Ohio Constitution to require an agency of the state to conduct games with immediate prize determinations for individual participants by electronic devices at no more than, and only at, seven licensed commercial horseracing tracks in Ohio and only in those counties where licensed commercial horseracing tracks operated during calendar year 2003. Additionally, it will require that the entire net proceeds of those games be used for elementary, secondary, vocational, and special education school building construction and for scholarships for Ohio residents who are students at Ohio institutions of higher education.*

- "Associated equipment" means any hardware or software that is connected to an electronic gaming device (see below) or the central communications system (see below) for the purpose of performing communications to, or validation, auditing, or data and information retrieval by, the State Lottery Commission. It does not include telecommunications facilities and equipment of a public utility or electronic gaming devices.
- "Central communications system" means the computer system operated and controlled by the Commission to which electronic gaming devices and their associated equipment communicate for security, auditing, data and information retrieval, and other purposes authorized under the bill.
- "EDGE business enterprise" means a sole proprietorship, association, partnership, corporation, limited liability company, or joint venture certified by the Director of Administrative Services as a participant in the Encouraging Diversity, Growth, and Equity (EDGE) Program.
- "Electronic gaming device" means a device approved by the Commission for the purpose of conducting at tracks (see below) lotteries that provide immediate prize determinations for individual participants.
- "Electronic lottery sales agent" means a person who is a permit holder (see below) and who holds a current license issued under the bill to assist the Commission in conducting lotteries through the use of electronic gaming devices at a track.
- "Gross proceeds" means the amount of wagers by participants in lotteries minus payments to winning participants.
- "Key gaming employee" means any individual employed by or under contract with an electronic lottery sales agent or an employee of a contractor that provides management or employee-related services to an agent. These include gaming operator managers or assistant managers; facilities operator managers; electronic games managers; accounting department personnel; count room employees; cage department employees, including cashiers and main bank employees; vault department employees; surveillance and security department employees; floor managers; maintenance and security personnel, including custodians of electronic gaming devices and associated equipment and persons with access to cash and accounting records within those devices or equipment; and internal auditors of the agent.
- "Ohio-based business" means a business that pays the corporate franchise tax under Ohio law and that has a physical presence in Ohio.

- "Permit holder" means a corporation, trust, partnership, limited partnership, association, person, or group of persons issued a permit under the Horse Racing Law to conduct a racing meeting. However, it does not include the holder of a permit issued for a racing meeting at and during a county fair or an independent fair.
- "Track" means any of seven licensed commercial places, tracks, or enclosures that meet an Ohio constitutional requirement, where a permit holder conducts live horse racing for profit at a racing meeting. A "track" must be in a county where such a place, track, or enclosure operated during calendar year 2003, and includes facilities on premises contiguous or adjacent to that place, track, or enclosure.

Establishment of lotteries using electronic gaming devices

The bill requires the State Lottery Commission, if required by the Ohio Constitution, to conduct lotteries that provide immediate prize determinations for individual participants through the use of electronic gaming devices. The Commission must conduct these lotteries only through electronic lottery sales agents that have conducted live horseracing meetings during the past seven calendar years preceding their licensing as agents and only at tracks. If, on the bill's effective date, more than one permit holder conducted horseracing meetings at a track during the previous calendar year, the permit holders must designate, by a written agreement, one permit holder, or a person or entity owning or owned by one or more permit holders, as the agent for that track. The agreement must be filed with the Commission prior to the issuance of an agent license and cannot be modified without the Commission's consent. (R.C. 3770.22.)

Licensure of electronic lottery sales agents

Under the bill, the Director of the State Lottery Commission must license as an electronic lottery sales agent a permit holder who applies for the license and satisfies certain requirements. Each applicant must do all of the following (R.C. 3770.24(A)):

- Pay to the Commission a fee of \$1,000;
- Present proof, in the form the Director requires, that the applicant is a permit holder;
- Prior to the approval of the application, obtain a letter of credit, or a surety or, if the Director requires, a fidelity bond, in an amount the Director determines, but not to exceed \$100,000. A bond may be with any company that complies with the bonding and surety laws of Ohio and the

requirements established by Commission rules adopted under the bill (see "Rules," below).

The Director must certify to the Commission that an applicant has the required permit and letter of credit or bond (R.C. 3770.24(A)).

An agent's license is effective for five years, and an agent, on or before the date the Director establishes, must renew the agent's license and the agreement required by the bill (see "Agreement between the Commission and electronic lottery sales agents," below) and provide evidence that the agent is a current permit holder and has renewed the required letter of credit or bond. The Director must certify to the Commission that an applicant for renewal has the required permit and letter of credit or bond. (R.C. 3770.24(B).)

The bill specifies that any violation of its provisions or the other provisions of the State Lottery Law, or of any rule adopted under that law, is sufficient reason for the Commission to refuse to issue a license to an applicant or for the Commission to suspend or revoke any license issued under the bill. Any action of the Commission with respect to the issuance, refusal, suspension, or revocation of a license under the bill is subject to the Administrative Procedure Act. (R.C. 3770.24(C).)

Relationship between the Commission and electronic lottery sales agents

The bill states that the relationship between the State Lottery Commission and an electronic lottery sales agent is one of trust. An agent collects funds on behalf of the Commission through the sale of "rights to participate in lotteries" for which the agent receives a commission. An agent may not accept any thing of value from, or enter into an agreement with, a manufacturer, distributor, or vendor of electronic gaming devices and associated equipment before filing with the Commission a copy of the agreement or a document memorializing the offer of the thing of value. (R.C. 3770.25.)

Agreement between the Commission and electronic lottery sales agents

Under the bill, the State Lottery Commission must execute an agreement with each electronic lottery sales agent. Each agreement and renewed agreement must provide all of the following (R.C. 3770.26(A)(1) to (12); Sections 3(A) and (B) and 4):

- **Device licensing fee.** That the agent pay to the Commission a one-time licensing fee equal to \$8,000 for each electronic gaming device that is to be located at the agent's premises before a device can be operated. If a device

is replaced by another device, no additional licensing fee is required for the replacement device.

- **Commission.** That a certain percentage of the *gross proceeds* of the lotteries using electronic gaming devices must be paid as a commission to the agent for services and personnel provided by the agent for the lotteries (see "**Responsibilities of an electronic lottery sales agent,**" below); for the provision, maintenance, and repair of the buildings and grounds at the track where the devices are located; and for injury to the agent's existing business as the result of the Commission's conduct of lotteries at the track. From the date an agent pays the agent's licensing fee for devices through October 31, 2004, the percentage of the gross proceeds paid as a commission will be 40.5%. Then, from November 1, 2004, until a date determined by Commission rules, the percentage will be decreased to 39%. Finally, following the date set by the Commission, the percentage will be decreased to 37.5%.
- **Reimbursement of costs.** That a certain percentage of the *gross proceeds* of the lotteries using electronic gaming devices must be credited to the agent for reimbursement of costs and damages as a result of the Commission's operation of electronic gaming devices at the track. From the date an agent pays the agent's licensing fee for devices through October 31, 2004, the percentage of the gross proceeds credited as reimbursement will be 9%. And, from November 1, 2004, until a date determined by Commission rules, the percentage will continue to be 9%. Finally, following the date set by the Commission, the percentage will increase to 10.5%.

From the above percentage amount of the gross proceeds credited for reimbursement, the agent must add a certain amount of the gross proceeds of the lotteries using electronic gaming devices conducted at a track during the previous month to the *purse money* for live horse racing conducted at that track. From the date an agent pays the agent's licensing fee for devices through October 31, 2004, the percentage of the gross proceeds added to the purse money generally will be 8.25%. And, from November 1, 2004, until a date determined by Commission rules, the percentage generally will continue to be 8.25%. Finally, following the date set by the Commission, the percentage generally will increase to 9.75%. However, each of these purse percentage amounts must be reduced by 1% if the agent enters into a written agreement with the Ohio Division of the Horsemen's Benevolent and Protective Association or the Ohio Harness Horsemen's Association for special distribution of 1% of the gross proceeds of the lotteries using electronic gaming devices (see "**Special distribution of money,**" below).

Also, from the above percentage amount of the gross proceeds credited for reimbursement, the agent must pay an amount equal to .25% of the gross proceeds of lotteries using electronic gaming devices conducted at a track during the previous month to the *county* in which the track is located, and an amount equal to .50% of those gross proceeds to the *municipal corporation* in which the track is located or, if it is not located within a municipal corporation, to the *township* in which it is located. If the track is located in more than one county, and municipal corporation or township, the amounts payable must be divided equally among the counties, and municipal corporations or townships.

- **School building construction.** That the *initial 5% or \$25 million of the net proceeds* of the lotteries using electronic gaming devices transferred to the State Lottery Fund, whichever is less, must be transferred from the Fund by the Director of Budget and Management to the Lottery Profits Education Fund for use in specified school building construction (see "**Lottery Profits Education Fund,**" below).
- **College scholarships.** That *the remaining net proceeds* of the lotteries using electronic gaming devices transferred to the State Lottery Fund must be transferred from the Fund by the Director of Budget and Management to the Ohio Scholarship Program Fund (see "**Ohio Scholarship Program,**" below).
- **Fixtures and equipment.** That the agent must give to the Commission a written schedule that lists the installed cost of all fixtures and equipment the agent supplies to assist the Commission in conducting lotteries using electronic gaming devices, and, if the Commission discontinues conducting the lotteries for any reason other than breach of the agreement by the agent or suspension or revocation of the agent's license or the associated permit issued under the Horse Racing Law, that the Commission must reimburse the agent for the unamortized cost of the fixtures and equipment listed in the schedule.
- **Required conduct of horseracing.** That the agent must conduct live horseracing meetings and simulcast racing programs each calendar year on not less than the number of days required by the Horse Racing Law pursuant to the permit issued by the State Racing Commission for that track.
- **Number of devices.** That not less than 1,800 nor more than 2,500 electronic gaming devices may be placed at a track unless there is a determination by the Director of the Commission that the number of devices is consistent with the bill's purposes and has been requested by the agent.

- **Hours of electronic lotteries.** That lotteries using electronic gaming devices may not be conducted between the hours of 5 a.m. and 8 a.m. on any day.
- **Ohio-based businesses goal.** That the agent must set a goal to award not less than 50% of the contracts related to the provision, maintenance, and repair of necessary capital improvements for the facilities at the track where the electronic gaming devices are located (see "**Responsibilities of an electronic lottery sales agent,**" below) to Ohio-based businesses. Additionally, the agent must make a good faith effort to see that not less than 50% of the subcontracts of those contracts are awarded to Ohio-based businesses.
- **EDGE business enterprises goal.** That the agent must set a goal to award not less than 20% of the contracts related to the provision, maintenance, and repair of necessary capital improvements for the facilities at the track where the electronic gaming devices are located to Ohio-based businesses that are *also* EDGE business enterprises. Additionally, the agent must make a good faith effort to see that not less than 20% of the subcontracts of those contracts are awarded to Ohio-based businesses that are *also* EDGE business enterprises.
- **Residency goal.** That the agent must set a goal that not less than 50% of the key gaming employees and other personnel employed by the agent to perform duties to implement the lotteries using electronic gaming devices (see "**Responsibilities of an electronic lottery sales agent,**" below) will be residents of the county where the track is located or of a county adjacent to that county.
- **Reporting requirement.** That the agent, not later than one year after the initial implementation of the lotteries using electronic gaming devices and annually thereafter, must report to the Commission on the agent's efforts to comply with the above-described Ohio-based businesses, EDGE business enterprises, and residency goals.

Under the bill, the term of the agreement cannot exceed five years, and the agreement cannot be terminated by the parties during its term, except for breach of a provision of the agreement, or suspension or revocation of an agent's license issued under the bill or of a permit issued under the Horse Racing Law. If the Commission intends to terminate or not renew an agreement, it must provide the agent with an opportunity for an adjudication under the Administrative Procedure Act. (R.C. 3770.26(B).)

Special distribution of money

The bill allows an electronic lottery sales agent and the Ohio Division of the Horsemen's Benevolent and Protective Association or Ohio Harness Horsemen's Association, prior to December 31, 2018, to agree in writing that an amount equal to 1% of the gross proceeds of the lotteries using electronic gaming devices conducted at a track be paid by the agent to one or more specified funds designated by the appropriate horsemen's association. The written agreement must be filed with the State Lottery Commission and the State Racing Commission. The funds that may be designated are the Ohio Fairs Fund, the Ohio Thoroughbred Race Fund, the Ohio Standardbred Development Fund, and the Ohio Quarter Horse Development Fund. As noted above, if such an agreement is entered into, the percentage amount of the gross proceeds of those lotteries that must be added as purse money for live horse racing conducted at that track must be reduced by 1% (see "**Agreement between the Commission and electronic lottery sales agents**," above). (Section 4.)

Responsibilities of the Commission

The bill requires the State Lottery Commission to do all of the following in conducting lotteries using electronic gaming devices (R.C. 3770.27):

- Approve, qualify, certify, procure, install, maintain, repair, replace, and operate all electronic gaming devices, associated equipment, and intellectual property necessary for the conduct of the lotteries.
- Procure, install, establish, maintain, repair, replace, and operate the central communications system that provides security, auditing, and data and information retrieval as determined necessary by the Commission and that does not limit participation to only one electronic gaming device manufacturer, distributor, supplier, or provider. The system must be on-line and in continuous communication with computers, electronic gaming devices, and associated equipment located at the tracks of electronic lottery sales agents.
- Select, qualify, certify, retain, pay, and terminate all contractors, suppliers, service companies, and vendors of the Commission necessary for the conduct of the lotteries, including those persons that provide the devices, associated equipment, and the central communications system.
- Establish standards for the daily payment by an agent, through electronic transfer or other system the Commission's Director mandates, of the gross proceeds of the lotteries, less the commission paid and the reimbursement credited to the agent under the bill.

- Review advertising and promotion of the lotteries. The Commission may approve or disapprove of any advertising or promotion, but it cannot unreasonably withhold its approval. The Commission *generally* must pay 50% of the cost of producing, distributing, and operating any approved advertising or promotion, with the remainder of the cost generally being paid by the agent that initiates the advertising or promotion. However, excluding the initial year the lotteries are conducted, the Commission's annual advertising and promotion expenditures cannot exceed 5% of the annual gross proceeds of the lotteries.

Responsibilities of an electronic lottery sales agent

The bill requires an electronic lottery sales agent to do all of the following in assisting the State Lottery Commission with the conduct of lotteries using electronic gaming devices (R.C. 3770.28):

(1) Select the number, type, denomination, and location of, and refill, the electronic gaming devices that the Commission places at the track, and promptly report to the electronic gaming device manufacturer and the Commission any malfunctions of the devices or failures of the manufacturers or service technicians to promptly service and repair the devices or associated equipment;

(2) Provide, maintain, and repair necessary capital improvements for the facilities at the track at which the devices are located;

(3) Hire and compensate adequate personnel to ensure compliance with the bill, including sufficient security personnel to protect and secure the devices and associated equipment and the track at which the devices are located;

(4) Hire, compensate, and be responsible for the performance of the duties of, key gaming employees, ensuring that they have been and remain during the course of their employment duly licensed by the Commission;

(5) By electronic transfer or other system the Director mandates, transfer or deliver daily to the Commission the gross proceeds of the lotteries, less the commission paid and the reimbursement credited to the agent under the bill;

(6) Deliver payment to winning participants of prizes awarded by lotteries conducted at the track.

Rules

In general. Current law requires the State Lottery Commission to adopt rules in accordance with the Administrative Procedure Act (APA) under which a statewide lottery may be conducted. The bill instead requires the Commission to

adopt rules in accordance with the APA under which *lotteries*, including, but not limited to, games providing immediate prize determinations for individual participants through the use of electronic gaming devices, *must* be conducted. It then slightly modifies the topics to be addressed by those rules to include language encompassing lotteries using electronic gaming devices. (R.C. 3770.03(A).)

Additional rules. Current law also requires the Commission to adopt additional specified rules in accordance with the APA under which a statewide lottery and statewide joint lottery games may be conducted. The bill, however, requires the Commission to adopt the additional specified rules for statewide joint lottery games that may be conducted (similar to current law), and for *lotteries*, including, but not limited to, games providing immediate prize determinations for individual participants through the use of electronic gaming devices, that *must* be conducted. (R.C. 3770.03(B).) The bill modifies certain of the subjects that these additional rules currently must address and adds new subjects as follows (R.C. 3770.03(B)):

(1) Currently, the rules must address the manner in which lottery sales revenues are collected, including authorization for the Commission's Director to impose penalties for a failure of a lottery sales (ticket) agent to transfer revenues to the Commission in a timely manner. The bill adds electronic lottery sales agents to this requirement.

(2) Currently, the rules must establish the amount of compensation to be paid licensed agents. The bill retains this requirement, but creates an exception to it because the compensation to be provided to electronic lottery sales agents is in accordance with their agreements with the Commission.

(3) Currently, the rules must establish the substantive criteria for the licensing of lottery sales (ticket) agents and procedures for revoking or suspending their licenses. The bill specifies the revocation and suspension procedures also must apply to the licenses of electronic lottery sales agents. (See also R.C. 3770.02(E).)

(4) The bill adds as required subjects (a) the manner in which lotteries that use electronic gaming devices must be conducted and the security, licensing, and enforcement procedures necessary to ensure the integrity of those lotteries, (b) licensing requirements for key gaming employees of electronic lottery sales agents or agents' contractors that employ key gaming employees (the maximum initial or yearly fee for a license issued by the Commission cannot exceed under the rules the Commission's cost and expenses of investigation and licensing), and (c) any other subjects the Commission determines are necessary for the conduct of lotteries using electronic gaming devices.

Uncodified law. The bill, in uncodified law, requires the Commission to adopt rules that (1) require electronic lottery sales agents to file all documents relating to their borrowing or financing of *device licensing fees* (the \$8,000 amounts discussed previously) and determining the date at which the financing or borrowing is retired, and (2) provide that, following the retirement of the financing or borrowing, these rules will cease to be effective (Section 3(C)).

Prohibitions

Particular games. The bill prohibits the State Lottery Commission from conducting, directly or in conjunction with any lottery sales agent or electronic lottery sales agent, keno or the following live casino table games (R.C. 3770.03(D)(1)):

- Card games (including poker, blackjack, twenty-one, casino war, or baccarat) played with persons dealing cards and participants wagering on outcomes determined by the dealt cards;
- Roulette, wheel of fortune, or any other game played with persons spinning wheels and participants wagering on outcomes determined by a spinning wheel;
- Craps, mah jong, sic bo, or any other game played with persons casting or dealing dice, tiles, or similar objects, and participants wagering on outcomes determined by the location or appearance of the objects cast.

However, the bill allows the Commission to conduct lotteries replicating card games, spinning-wheel games, or cast-object games by electronic gaming devices (R.C. 3770.03(D)(2)).

Sales and gifts. Current law prohibits any person other than a licensed lottery sales agent from selling lottery tickets, but that prohibition and others discussed below cannot be construed to prevent any person from giving lottery tickets as a gift. A transfer of lottery tickets by any person that is made in connection with a marketing, promotional, or advertising program must be deemed to be a gift for the purposes of the State Lottery Law. The bill replaces "lottery tickets" with "rights to participate in lotteries" in these provisions and expands their language to specifically include electronic lottery sales agents--thus covering lotteries using electronic gaming devices. (R.C. 3770.08(B).)

Permissible purchases. The bill prohibits any person from selling rights to participate in lotteries using electronic gaming devices to any person under 21 years of age. Additionally, no person under that age may attempt to purchase those rights. Current law contains similar prohibitions for selling or attempting to

purchase lottery tickets, with the age of the purchaser being under 18 years of age. (R.C. 3770.08(C).)

License awards. Current law prohibits anyone from inviting, soliciting, demanding, offering, or accepting any payment, contribution, favor, or other consideration to influence the award, renewal, or retention of a lottery sales agent license. The bill adds electronic lottery sales agent licenses to this prohibition. (R.C. 3770.08(D).)²

Lottery money

State Lottery Gross Revenue Fund. Current law requires that all gross revenues received from sales of lottery tickets, fines, fees, and related proceeds in connection with the statewide lottery and all gross proceeds from statewide joint lottery games be deposited into the State Lottery Gross Revenue Fund, which is in the custody of the Treasurer of State but is not part of the state treasury. The bill replaces "lottery tickets" with "rights to participate in lotteries" for purposes of the gross revenues received from lotteries that must be deposited into the Fund and, in doing so, covers lotteries using electronic gaming devices. (R.C. 3770.06(A)(1).)

State Lottery Fund. Current law also provides that, except for gross proceeds from statewide joint lottery games, all revenues of the State Lottery Gross Revenue Fund that are not paid to holders of winning lottery tickets, that are not required to meet short-term prize liabilities, that are not credited to lottery sales agents in the form of bonuses, commissions, or reimbursements, that are not paid to financial institutions to reimburse those institutions for sales agent nonsufficient funds, and that "are" collected from sales agents for remittance to insurers under contract to provide sales agent bonding services must be transferred to the State Lottery Fund in the state treasury. The bill expands this requirement to cover lotteries using electronic gaming devices by providing that, except for gross proceeds from statewide joint lottery games, all revenues of the State Lottery Gross Revenue Fund that are not paid to winning *participants*, that are not required to meet short-term prize liabilities, that are not credited to lottery sales agents or *electronic lottery sales agents* in the form of bonuses, commissions, or reimbursements, that are not necessary for procuring, installing, maintaining, servicing, operating, repairing, advertising, promoting, and replacing *electronic gaming devices*, associated equipment, and the central communications system, that are not paid to financial institutions to reimburse those institutions for sales agent nonsufficient funds, *that are not disbursed to the Department of Alcohol and Drug Addiction Services* (see "**Treatment and prevention of problem gambling.**")

² A violation of any provision discussed in this portion of the analysis is a criminal offense--specifically, a misdemeanor of the third degree (R.C. 3770.99--not in the bill).

below), and that are *not* collected from sales agents for remittance to insurers under contract to provide sales agent bonding services must be transferred to the State Lottery Fund. (R.C. 3770.06(A)(2).)

Lottery Profits Education Fund. Under current law, when the Director of Budget and Management determines that the amount to the credit of the State Lottery Fund (excluding the proceeds from statewide joint lottery games) is in excess of that needed (1) to meet the maturing obligations of the State Lottery Commission and (2) as working capital for the Commission's operations, the Director must transfer the excess amount to the Lottery Profits Education Fund. Moneys in the Lottery Profits Education Fund must be used solely for the support of elementary, secondary, vocational, and special education programs as determined in General Assembly appropriations or as provided in bond proceedings for the payment of debt service on obligations issued to pay costs of school building--capital facilities. (R.C. 3770.06(B).)

The bill retains these provisions, but states that the net proceeds from the lotteries using electronic gaming devices that are transferred to the State Lottery Fund are not to be considered when the Director is determining the excess amount of the Fund that must be transferred to the Lottery Profits Education Fund (R.C. 3770.06(B)(1)). Instead, these net proceeds are to be transferred and used in the following manners. First, the Director of Budget and Management must transfer the initial 5% or \$25 million of the net proceeds from the lotteries using electronic gaming devices, whichever is less, from the State Lottery Fund to the Lottery Profits Education Fund. These net proceeds must be used solely for school building construction for elementary, secondary, vocational, and special education programs. The Director must transfer the remaining net proceeds from the lotteries using electronic gaming devices in the State Lottery Fund to the Ohio Scholarship Program Fund for use in the Ohio Scholarship Program (see **Ohio Scholarship Program**," below). (R.C. 3770.06(B)(1) and (2) and (3)(b).)

Treatment and prevention of problem gambling. The bill requires the Director of the State Lottery Commission to monthly order the Treasurer of State to disburse to the Department of Alcohol and Drug Addiction Services *½% of the gross proceeds* from lotteries using electronic gaming devices during the preceding month that are in the State Lottery Gross Revenue Fund. The Department must use this ½% of the gross proceeds for the treatment and prevention of problem gambling. (R.C. 3770.061.)

Miscellaneous provisions

Impact on local communities. The conduct of lotteries and the operation of electronic gaming devices at tracks under the bill cannot be deemed to change the character of the use of the tracks under any county, municipal, or township



land use regulation, ordinance, or agreement (R.C. 3770.29(A)). The bill also prohibits any license or excise tax or fee from being assessed on or collected from an electronic lottery sales agent by any county, township, municipal corporation, school district, or other political subdivision of the state that has the authority to assess or collect a tax or fee, by reason of the conduct of lotteries using electronic gaming devices at tracks (R.C. 3770.29(B)).

Impact on the State Racing Commission. The bill's provisions relating to the conduct of lotteries using electronic gaming devices do not modify the authority of the State Racing Commission to regulate horse racing or, except as provided in the bill, the rights and responsibilities of permit holders under the Horse Racing Law (R.C. 3770.30).

Hardware and software. The bill requires an electronic gaming device to be connected to the central communications system and permits it to be linked with other similar devices for the purpose of lotteries providing prizes based, in whole or part, upon the play of other devices electronically connected and located at the same or other tracks. The State Lottery Commission must evaluate and approve both the hardware of an electronic gaming device and the software that is used to operate it. The Commission cannot approve an electronic gaming device unless that software will provide to participants a projected average return of more than 85%. (R.C. 3770.23.)

Except as provided in the agreements between the Commission and electronic lottery sales agents, the number, type, denomination, and location of electronic gaming devices at a track must be within the judgment of an agent. During the first six months of conducting lotteries, not more than 40% of the devices the Commission operates at an agent's track can be manufactured by the same entity. (R.C. 3770.23.)

Audits. Current law requires the Auditor of State to conduct annual audits of all lottery funds and any other audits that the Auditor of State or the General Assembly considers necessary. The Auditor of State may examine all records, files, and other documents of the Commission, and the records of lottery sales agents that pertain to their activities as agents, for purposes of conducting authorized audits. The bill includes the records of licensed electronic lottery sales agents in that examination authority. (R.C. 3770.06(D).)

Gambling Law applicability. The bill states that the Gambling Law does not apply to, affect, or prohibit lotteries conducted under the State Lottery Law (R.C. 3770.03(C)).

Conforming changes. Finally, the bill makes necessary conforming changes in statutes that contain references to the existing lottery program (R.C. 3770.02(H), 3770.05, 3770.07, and 4301.03(B)).

Ohio Scholarship Program

Overview

The bill creates the Ohio Scholarship Program, which is to be administered by the Board of Regents. Under the Program, scholarships are to be granted to certain eligible students who are enrolled in "eligible institutions"--state institutions of higher education in Ohio; private nonprofit colleges or universities that have been issued a certificate of authorization by the Board under the Educational Corporation Law; private career schools holding authorizations issued by the State Board of Career Colleges and Schools for baccalaureate, master's, or doctoral degree programs; and private institutions that are exempt from regulation under the Career Colleges and Schools Law, that are authorized to grant baccalaureate or master's degrees, that have certain accreditations, and that are operated by a for-profit corporation.³ A Program scholarship generally will be in the amount of \$5,900 and must be increased each academic year by 5%, assuming that a student satisfies the Board's criteria for the renewal of the scholarship. A Program scholarship is renewable for up to three additional academic years. However, if in any given year *all eligible students* cannot be awarded Program scholarships calculated as described above because the number of eligible students in that year exceeds the amount of available money for Program scholarships, the Board must reduce the maximum amount of the Program scholarships to be awarded that year to an amount that the Board determines will not exceed the amount of available money (see **Funding**," below). (R.C. 3333.30(A)(1), (2), (3), and (4), (B), and (C)(2).)

Eligibility

Under the Ohio Scholarship Program, a student must receive, pursuant to rules adopted by the Board of Regents, *an initial scholarship* upon the student's

³ "State institution of higher education" means the University of Akron, Bowling Green State University, Central State University, the University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, the Ohio State University, Shawnee State University, the University of Toledo, Wright State University, Youngstown State University, the Northeastern Ohio Universities College of Medicine, the Medical College of Ohio at Toledo, any community college, any state community college, any university branch, and any technical college. (R.C. 3345.011 and 3345.12, both not in the bill.)

enrollment in an eligible institution if both of the following apply (R.C. 3333.30(A)(2), (B), (D), and (E)):

- The student graduated from either a public or nonpublic high school in Ohio during or after the 2004-2005 academic year.
- The student graduated in the top 10% of the 12th grade class from the high school. The bill provides that, for purposes of determining if a student graduated in the top 10%, the total number of students in that class will not include any otherwise eligible student who either (1) does not enroll in an eligible institution and, as a result, cannot receive a Program scholarship or (2) receives any other scholarship or scholarships that equal or exceed \$5,900 in the aggregate.

Under the Program, as mentioned previously, an initial scholarship can be renewed for up to three additional academic years in accordance with rules adopted by the Board (R.C. 3333.30(B) and (D)).

Funding

Ohio Scholarship Program Fund. The Ohio Scholarship Program is to be funded solely with a portion of the net proceeds of the lotteries using electronic gaming devices and the interest earned on that portion. Specifically, after the initial 5% or \$25 million of those net proceeds, whichever is less, is transferred from the State Lottery Fund to the Lottery Profits Education Fund, the remaining net proceeds from the lotteries using electronic gaming devices in the State Lottery Fund must be transferred by the Director of Budget and Management from the Fund to the Ohio Scholarship Program Fund, which the bill creates in the state treasury. (R.C. 3333.30(C)(1)(a) and 3770.06(B)(2).)

The bill provides that up to .25% of the money in the Ohio Scholarship Program Fund may be used to implement and administer the Ohio Scholarship Program. The remaining money in the Fund must be used to fund Program scholarships. Any interest earned on the money in the Fund must be credited to it. (R.C. 3333.30(C)(1)(a).)

Distribution of scholarship proceeds. Pursuant to rules adopted by the Board of Regents, school districts and nonpublic high schools must notify the Board concerning each eligible student in that district or high school who enrolls in an eligible institution. After receiving the information, the Board must direct the Director of Budget and Management to establish an *individual account* for each eligible student in the Ohio Scholarship Program Fund. Upon the establishment of an eligible student's account, and annually thereafter for each academic year that the student is eligible for a Program scholarship, the Board

must (1) direct the Director to credit to the account an amount equal to the eligible student's Program scholarship for that academic year and (2) cause an electronic transfer of scholarship proceeds from the student's account to the eligible institution the student is attending. (R.C. 3333.30(C)(1)(b) and (c).)

Ohio Scholarship Program Fund reserve money. From the bill's effective date until June 30, 2005, 87% of the money transferred to the Ohio Scholarship Program Fund and the interest earned on that money must be retained in the Fund as a reserve for potential use for the Ohio Scholarship Program; the Director of Budget and Management must transfer during that period the remaining 13% of that money to the Ohio Learn and Earn Scholarship Program Fund for use under that program (see "**Ohio Learn and Earn Scholarship Program**," below). Then, on and after July 1, 2005, once the Director of Budget and Management establishes and credits eligible students' accounts in the Ohio Scholarship Program Fund in any academic year, the Director must transfer 95% of the remaining money that was available in the Fund for scholarships in that year to the Ohio Learn and Earn Scholarship Program Fund for use under that program. The remaining 5% of that available money must be retained in the Ohio Scholarship Program Fund and added to the previously mentioned reserve; it cannot be transferred to the Ohio Learn and Earn Scholarship Program Fund in any subsequent academic year. (R.C. 3333.30(C)(1)(d).)

Implementation

The bill requires the Board of Regents to adopt rules to implement the Ohio Scholarship Program, including rules to be used by school districts and nonpublic schools when determining if a student graduated in the top 10% of the 12th grade class from a high school and rules regarding the criteria a student must satisfy to be eligible for an initial Program scholarship and for renewal of the scholarship (R.C. 3333.30(D)).

Ohio Learn and Earn Scholarship Program

Overview

The bill creates the Ohio Learn and Earn Scholarship (OLES) Program, which is to be administered by the Board of Regents. Under the OLES Program, the Board must provide scholarships to certain students who graduate from high school during or after the 2004-2005 academic year. An OLES Program scholarship will be in an amount up to \$5,900 determined by the Board and must be increased each academic year by 5%, assuming that a student satisfies the Board's criteria for the renewal of the scholarship. An OLES Program scholarship is renewable for up to three additional academic years. However, if in any given year *all eligible students* cannot be awarded an OLES Program scholarship

because the number of eligible students in that year exceeds the amount of available money for OLES Program scholarships, the Board must reduce the maximum amount of the scholarships to be awarded to an amount that the Board determines will not exceed the amount of available money. (R.C. 3333.301(A), (B)(1), and (D).)

Eligibility

A student must satisfy each of the following requirements to be eligible for an OLES Program scholarship (R.C. 3333.301(B)(2)):

- Graduate from either a public or nonpublic high school in Ohio.
- Enroll in a state institution of higher education (see Footnote #3), a nonprofit college or university that has been issued a certificate of authorization by the Board of Regents under the Educational Corporation Law, a private career school holding authorizations issued by the State Board of Career Colleges and Schools for baccalaureate, master's, or doctoral degree programs, or a private institution that is exempt from regulation under the Career Colleges and Schools Law, that is authorized to grant baccalaureate or master's degrees, that has certain accreditations, and that is a for-profit corporation.
- Meet any other requirements, including, but not limited to, an income requirement, established by the Board of Regents.

Point system

The bill requires the Board of Regents to establish (1) a point system to be used in implementing the OLES Program and (2) a total score under the system that a student must receive in order to be eligible for an OLES Program scholarship. As part of the system, students will receive points for reaching achievements during kindergarten through 12th grade in specified categories including, but not limited to, academics, college preparedness, extracurricular activities, work experience, community service, and volunteer service. Fifty per cent of the total score a student must receive to be eligible for an OLES Program scholarship must be for reaching achievements in the category of academics. (R.C. 3333.301(C).)

Funding

Ohio Learn and Earn Scholarship Program Fund. The OLES Program is to be funded solely with (1) specified portions of the net proceeds of the lotteries using electronic gaming devices that are transferred by the Director of Budget and

Management during specified periods from the Ohio Scholarship Program Fund to the Ohio Learn and Earn Scholarship Program Fund, which the bill creates in the state treasury, and (2) any interest earned on those portions (see detail under "*Ohio Scholarship Program Fund reserve money*," above) (R.C. 3333.30 (C)(1)(d) and 3333.301(A)).

The bill provides that, during the *first year* of the implementation of the OLES Program, up to 2% of the money in the OLES Program Fund may be used to implement and administer the OLES Program. During the *second year* of the implementation, up to 1% of the money in the Fund may be so used. And, during each subsequent year of the implementation, up to .5% of the money in the Fund may be so used. The remaining money in the Fund must be used to fund OLES Program scholarships. Interest earned on money in the Fund must be credited to it. (R.C. 3333.301(A).)

Implementation

The bill requires the Board of Regents to adopt rules to implement the OLES Program. These rules must include the criteria a student must satisfy to be eligible for an initial OLES Program scholarship and for renewal of the scholarship, must *phase in* the OLES Program beginning with students who graduate from high school during the 2004-2005 academic year, and must be consistent with all of the following requirements (R.C. 3333.301(E)):

- In the first and second years of phasing-in, the Board can use no more than 15% of the principal of the OLES Program Fund and any interest earned on that principal.
- After the second year of phasing-in and until the principal of the Fund equals \$1 billion, the Board may use no more than 10% of that principal and any interest earned on that principal.
- The Board must fully implement the OLES Program only when the principal of the Fund equals \$1 billion. In any given year in its full implementation of the OLES Program, the Board may use (1) the money transferred by the Director of Budget and Management in that year from the Ohio Scholarship Program Fund to the OLES Program Fund, (2) no more than 10% of the money remaining in the OLES Program Fund from the previous year, and (3) the interest earned on all money in the OLES Program Fund. If the principal of the OLES Program Fund at any time becomes less than \$1 billion, the Board must promptly cause the principal to be restored to \$1 billion.

Finally, the bill requires the Department of Education to work with the Board to implement the OLES Program (R.C. 3333.301(F)).

Constitutional amendment

Ballot question

As previously noted, Substitute Senate Joint Resolution 8, if approved by the electors of the state, will amend Section 6 of Article XV of the Ohio Constitution to authorize an agency of the state to conduct games that make immediate prize determinations for individual participants by electronic devices at no more than seven licensed commercial horseracing tracks in Ohio. The bill allows the General Assembly, by concurrent resolution, to prescribe the title and ballot language for, and prepare an explanation of, this proposal and to submit the title, ballot language, and explanation to the Ohio Ballot Board. The explanation may include statements as to the purposes and effects of the proposal. (Section 5(A).)

The Board generally *is required to* adopt the title, ballot language, and explanation submitted by the General Assembly for the proposal, as if it was prescribing ballot language for or preparing an explanation of another constitutional amendment proposed by the General Assembly. However, the Board does not have to adopt the title, ballot language, or explanation if a majority of its members finds the submitted title, ballot language, or explanation would mislead, deceive, or defraud the electors of the state voting on the proposal. The Board must certify the submitted title, ballot language, and explanation to the Secretary of State not later than 80 days before the March 2, 2004, special election unless it makes such a finding. (Section 5(A).)⁴

⁴ *The bill notwithstanding statutory provisions that require the Ohio Ballot Board to prescribe ballot language for and prepare an explanation of constitutional amendments proposed by the General Assembly, and that require the Secretary of State to determine the title of a proposal (which ballot language must properly identify the substance of a proposal and which title must be a true and impartial statement of the proposal and not be likely to create prejudice for or against the proposal) (R.C. 3505.062(A) and (B) and 3519.21). However, the bill does not affect the provisions of Section 1 of Article XVI of the Ohio Constitution that are mirrored in R.C. 3505.062(A) and (B)--namely, the constitutional requirements that the Ohio Ballot Board prescribe by a majority vote the ballot language for and prepare an explanation of constitutional amendments proposed by the General Assembly. The bill's provisions, then, that require the Ohio Ballot Board to certify a title, ballot language, and explanation submitted by the General Assembly unless specified findings are made could be found by a court to be unconstitutional as violative of Section 1 of Article XVI's provisions conferring authority upon the Ohio Ballot Board to prescribe ballot language and prepare explanations.*

Arguments for and against the question

The bill requires the Speaker of the House of Representatives and the President of the Senate to each appoint three individuals in favor of the proposal to draft and file arguments for the proposal, and three individuals against the proposal to draft and file arguments against the proposal. The arguments cannot exceed 300 words and must be filed with the Secretary of State no later than 75 days before the special election. (Section 5(B).)

Once drafted and filed, the arguments are *not* to be printed or included on the ballot. However, the Secretary of State must disseminate them in the same manner as arguments relating to constitutional amendments under current law (by direct mail or other written publication, broadcast, or other means or combination of means, as the Ohio Ballot Board may direct). (Section 5(B).)

Severability clause

The bill includes a severability clause (Section 6). The bill's severability clause is in addition to the existing, general severability statutory provision that is applicable to all provisions of the Revised Code (R.C. 1.50--not in the bill).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-03-03	pp. 401-402
Reported, S. State & Local Gov't & Veterans Affairs	---	---

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