

## MEMORANDUM



**DATE:** October 5, 2022  
**TO:** Interested Parties  
**FROM:** William E. Hamilton  
**RE:** **House Bills 4823 and 4824**, as Passed by the House - Legislative Analysis Update

This memo updates the House Fiscal Agency (HFA) analysis of House Bills 4823 and 4824. The HFA analysis, dated May 27, 2021, is of the bills as reported from the House Committee on Agriculture. Both bills were passed by the House without amendment on June 2, 2021. As a result, the May 27, 2021, analysis of the bills is also, effectively, of the bills as passed by the House.

As noted in the original analysis, House Bills 4823 and 4824 would respectively amend the Lawful Internet Gaming Act and the Lawful Sports Betting Act to remove the cap on revenues collected under those acts that are distributed to the Agriculture Equine Industry Development Fund (AEIDF). This memo provides additional information on AEIDF revenue and distribution, including updated revenue figures and analysis of the potential fiscal impacts of the two bills.

### **AEIDF Revenue Sources and Distribution**

The 1995 recodification of Michigan's horse racing laws, the Horse Racing Law of 1995, eliminated the tax on live horse race wagering and established a 3.5% tax on simulcast wagering. The Horse Racing Law of 1995 also created the AEIDF as a state restricted fund within the department of Treasury and directed revenue from the simulcast wagering tax for credit to the AEIDF. Section 20 of the Horse Racing Law directed the use of AEIDF revenue for various equine-related programs, as appropriated.

Although the Horse Racing Law of 1995 established and earmarked other fees for credit to the AEIDF, including revenue from various licensing fees and uncashed winning tickets ("outs"), revenue from the simulcast wagering tax revenue was by far the largest AEIDF revenue source, representing at least 90% of baseline AEIDF revenue.

Revenue from the simulcast wagering tax declined steadily from shortly after it was first established in 1995 through 2019. Simulcast wagering tax revenue peaked at \$12.8 million in 1998 and declined to \$2.1 million in 2019, the last full year prior to the COVID-19 pandemic. Revenue from the tax was \$954,500 in 2020 and \$1.9 million in 2021.<sup>1</sup>

For the 2021-22 fiscal year, revenue from the simulcast wagering tax was estimated at \$3.0 million.

Beginning in FY 2019-20, AEIDF revenue was supplemented with revenue from a tax on Advance Deposit Wagering (ADW), a method for wagering on the results of horse races through a computer or smart phone application that was first authorized in Michigan through 2019 amendments to the Horse Racing Law (2019 PA 153).<sup>2</sup> The tax was established at 1% of wagers processed through ADW licensed third-party facilitators. Revenue from this tax for credit to the AEIDF totaled \$579,500 in FY 2019-20, and \$297,600 in FY 2020-21.

In addition to tax and fee revenue related to horse racing and authorized under the Horse Racing Law, the AEIDF has also received revenue from earmarks of state revenue sources unrelated to horse racing.

<sup>1</sup> These figures are on a calendar year basis, from Office of Racing Commissioner/MGCB annual reports.

<sup>2</sup> <http://legislature.mi.gov/doc.aspx?2019-HB-4310>

The Lawful Internet Gaming Act (2019 PA 152) and the Lawful Sports Betting Act (2019 PA 149) both earmarked a portion of revenue from the taxes established under those acts to the AEIDF. Revenue from those earmarks was first credited to the AEIDF in FY 2020-21.

The Lawful Internet Gaming Act authorizes licensed internet gaming in Michigan, imposes a tax on adjusted gross receipts from that gaming, and earmarks tax revenue as follows:

- 30% to the city in which the internet gaming operator's license is located.
- 65% to the Internet Gaming Fund established in the act.
- 5% to the AEIDF.

The Lawful Internet Gaming Act also limits the amount of the deposit to the AEIDF to \$3.0 million per state fiscal year, and any revenue in excess of the \$3.0 million is to be credited to the Internet Gaming Fund. Similarly, the Lawful Sports Betting Act authorizes licensed sports betting, imposes a tax on sports betting gross proceeds, and earmarks tax revenue in the same amounts (and with the same \$3.0 million cap on the AEIDF earmark) as described above.

House Bills 4823 and 4824 would not change the current 5% earmark of either internet gaming or sports wagering tax revenue to the AEIDF. However, the bills would amend the respective acts to remove the \$3.0 million annual cap on revenue distributed to the AEIDF.

In addition to the ongoing statutory revenue earmarks noted above, the enacted FY 2021-22 budget for the Michigan Department of Agriculture and Rural Development (MDARD) included a one-time \$3.2 million transfer from the state general fund to the AEIDF.<sup>3</sup>

The \$3.2 million general fund appropriation was governed by the following boilerplate section:

Sec. 1002. From the funds appropriated in part 1 for the one-time agriculture equine industry development fund, \$3,200,000.00 shall be deposited into the Michigan agriculture equine industry development fund created under section 320 [sic] of the horse racing law of 1995, 1995 PA 279, MCL 431.320. All funds in the agriculture equine industry development fund are appropriated and available for expenditure under section 320 [sic] of the horse racing law of 1995, 1995 PA 279, MCL 431.320.

The table at the end of this memo shows actual AEIDF revenue by source from FY 2017-18 through FY 2020-21 (complete fiscal year totals) and FY 2021-22 through **September 26, 2022**. Average AEIDF revenue for the three fiscal years FY 2017-18 through FY 2019-20 was \$2.4 million. Revenue increased to \$6.3 million in FY 2020-21, primarily due to the earmark of \$3.0 million in Lawful Internet Gaming Act revenue.

The table shows FY 2021-22 AEIDF revenue through **September 26, 2022** of **\$9.6 million**. MDARD has estimated that final FY 2021-22 AEIDF revenue from all sources will total **\$9.8 million**.

### **Fiscal Impact – AEIDF Revenue and Distribution Impacts.**

The House Fiscal Agency's May 27, 2021, analysis of House Bills 4823 and 4824 indicated that the fiscal impact of the two bills would be contingent on whether or not the earmark to the AEIDF from either the Lawful Internet Gaming Act or the Lawful Sports Betting Act, or both, exceeded the current \$3.0 million limitation. At the time the analysis was written, it was not clear if the \$3.0 million thresholds would be met. Revenue from the tax imposed under the Lawful Sports Betting Act was not sufficient to cause the AEIDF earmark to exceed the \$3.0 million ceiling in FY 2020-21. It is unlikely to exceed that threshold in FY 2021-22 or FY 2022-23.

---

<sup>3</sup> Article 1 of 2021 PA 87, <http://legislature.mi.gov/doc.aspx?2021-SB-0082>

However, as shown in the table attachment at the end of this memo, the AEIDF share of Lawful Internet Gaming Act tax revenue did hit the \$3.0 million ceiling in FY 2020-21, will hit that ceiling again in FY 2021-22, and will likely exceed that ceiling in subsequent fiscal years. As a result, lifting the \$3.0 million ceiling on the Lawful Internet Gaming Act earmark to the AEIDF would result in an increase in AEIDF revenue and a reduction in revenue credited to the Internet Gaming Fund, a state restricted fund.

Although lifting the ceiling on the AEIDF earmark would increase revenue credited to the AEIDF, increasing revenue to the AEIDF revenue could result in additional AEIDF revenue transferred to private parties. A transfer of AEIDF revenue to private parties may occur in the 2021-2022 fiscal year (FY 2021-22) as described below.

### **AEIDF Revenue in Excess of \$8.0 million**

As noted above, the 2019 amendments to the Horse Racing Law, 2019 PA 153, authorized and regulated ADW. The amending legislation also added new subsection 19 to section 20 to establish a ceiling on the AEIDF. The subsection reads as follows:

Section 20(19): "If the amount allocated to the Michigan agriculture equine industry development fund under this act or any other source exceeds \$8,000,000.00 in a fiscal year, the amount in excess of \$8,000,000.00 must be allocated to the pari-mutuel horse racing disbursement account under section 19."

The reference to the "pari-mutuel horse racing disbursement account under section 19" is actually to section 19(2), a subsection also added in 2019 PA 153. Section 19(2) governs the distribution of the net commission from ADW: first to the pari-mutuel horse racing disbursement account, and then from that account, 50% to be divided equally to each certified horsemen's organization (CHO) and 50% to be divided equally to each track licensee. The subsection was silent regarding the use of the funds by either the CHO or the track licensee. That is to say, unlike the provisions of section 19(1), which required that the CHO share of the simulcast purse account be used for "purses for live horse races at a licensed race meeting in this state," the use of the net commission from ADW was without restriction; the recipients could use the funds for any purpose.

Section 19(2) states that the 50% share of the pari-mutuel horse racing disbursement account to be distributed to the CHOs is to be divided equally to *each* certified horsemen's organization and that the 50% share of the pari-mutuel horse racing disbursement account to be distributed to track licensees is to be divided equally to *each* track licensee. However, since April 2018, when Hazel Park racetrack closed and voluntarily relinquished its race meeting license and track license, there has been only one valid track license in Michigan, Northville Downs, and one recognized CHO, the Michigan Harness Horsemen's Association (MHHA). As a result, the provisions of section 19(2) appear to affect only two parties: one track licensee, the owners of Northville Downs, and one CHO, the MHHA.

To date, the provisions of section 19 have only affected the distribution of private resources: section 19(1) governs the net commission from simulcast wagering, and section 19(2) governs the net commission from ADW. However, the provisions of section 19(2) will come into play with respect to public resources in FY 2021-22 when the amount "allocated to" the AEIDF from all sources will exceed \$8.0 million.

### **Implementation of Section 20(19) – Transfer of AEIDF Revenue in Excess of \$8.0 million**

As noted above, section 20(19) of the Horse Racing Law states: "If the amount allocated to the Michigan agriculture equine industry development fund under this act or any other source exceeds \$8,000,000.00 in a fiscal year, the amount in excess of \$8,000,000.00 must be allocated to the pari-mutuel horse racing disbursement account under section 19."

In a September 15, 2022, memo, MDARD indicated that the phrase "amount allocated to" means *revenue*, and that the redistribution provisions of section 20(19) will be triggered in FY 2021-22 when AEIDF revenue from all sources, including the \$3.2 million general fund transfer, will exceed \$8.0 million.

MDARD has indicated that sometime after the close of the 2021-22 fiscal year, after all AEIDF revenue has been recorded, the department will effect the transfer of AEIDF revenue in excess of \$8.0 million to the pari-mutuel horse racing disbursement account. On September 15, 2022, MDARD estimated that final FY 2021-22 AEIDF revenue will be \$9.8 million. Based on the MDARD estimate, the amount of AEIDF revenue to be transferred to the pari-mutuel horse racing disbursement account at the close of the 2021-22 fiscal year would be \$1.8 million.

If actual revenue credited to the AEIDF fund in FY 2021-22 were greater than the \$9.8 million estimate, the amount to be transferred to the pari-mutuel horse racing disbursement account would also be greater than the \$1.8 million estimate.


It's not clear how this transfer would be recorded in the state accounting system. The proposed distribution is not a payment under a contract for goods or services provided, or a grant agreement to a public agency or local unit of government. The pari-mutuel horse racing disbursement account is not an account in the state accounting system.

#### **Summary: House Bills 4823 and 4824 Fiscal Impact**

As noted in the original analysis, House Bills 4823 and 4824 would respectively amend the Lawful Internet Gaming Act and the Lawful Sports Betting Act to remove the cap on revenues collected under those acts that are distributed to the AEIDF. The original HFA analysis of those bills highlighted the potential fiscal impact on state funds and on local units of government. However, in lifting the cap on revenues earmarked under the Lawful Internet Gaming Act and the Lawful Sports Betting Act for credit to the AEIDF, the bills could effectively increase the amount of AEIDF revenue redistributed to private parties through the pari-mutuel horse racing disbursement account.

MDARD has indicated that current provisions of the Horse Racing Law that provide for the redistribution of AEIDF revenue in excess of \$8.0 million will be effective for the 2021-22 fiscal year. Those provisions will also be effective in any subsequent fiscal year when AEIDF revenue exceeds \$8.0 million.

Attachment

AGRICULTURE EQUINE INDUSTRY DEVELOPMENT FUND					
Revenue History					
					YTD
					9/26/2022
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Simulcast Wagering Tax @ 3.5% <sup>1</sup>	2,819,418	2,269,885	1,370,087	2,748,783	2,639,726
"Outs," licenses, fines, misc. <sup>2</sup>	68,145	25,342	38,775	32,760	33,945
Advance Deposit Wagering <sup>3</sup>			579,527	297,574	131,590
Lawful Sports Betting				269,819	579,220
Internet Gambling Act				3,000,000	3,000,000
<b>AEIDF Revenue</b>	<b>\$2,887,563</b>	<b>\$2,295,227</b>	<b>\$1,988,389</b>	<b>\$6,348,936</b>	<b>\$6,384,481</b>
Civil Service Assessment	(448)	(600)	(361)	(323)	(21)
Transfer to DCH, Problem Gambling					
GF/GP Transfer					3,200,000
<b>Net AEIDF Revenue</b>	<b>\$2,887,115</b>	<b>\$2,294,627</b>	<b>\$1,988,028</b>	<b>\$6,348,613</b>	<b>\$9,584,460</b>
<p>1. Simulcast wagering tax established under Section 22 of the Horse Racing Law of 1995.</p> <p>2. Various license fees, fines, and other revenue sources established in the Horse Racing Law of 1995.</p> <p>3. Advance Deposit Wagering became effective in 2020.</p>					
<p><b>Source:</b> Revenue reports from SIGMA reporting tools.</p>					