

MEMORANDUM



DATE: October 5, 2022
TO: Interested Parties
FROM: William E. Hamilton
RE: **House Bill 4599**, as Passed by the House – Legislative Analysis Update

This memo updates the House Fiscal Agency (HFA) analysis of House Bill 4599, dated May 11, 2021. That analysis was of the bill as reported from the House Committee on Agriculture on April 28, 2021, and, effectively, of the bill as passed by the House on May 11, 2021. This memo provides additional information on Agriculture Equine Industry Development Fund (AEIDF) revenue and distribution, including updated revenue figures and analysis of the potential fiscal impacts of the bill.

As noted in the previous HFA analysis, House Bill 4599 would amend the Horse Racing Law to change the distribution of AEIDF revenue.

The analysis indicated that the bill's amendments to section 19 of the Horse Racing Law would affect only the distribution of private resources and would have no fiscal impact on the state or local units of government. The analysis also discussed the bill's amendments to section 20 of the Horse Racing Law dealing with the distribution of money from the AEIDF. The analysis indicated that the bill would not increase or decrease state revenue or expense and would only change the distribution of AEIDF monies.

However, the original HFA analysis did not fully describe the way in which the bill, in eliminating the current \$8.0 million ceiling on the amount allocated to the AEIDF in a fiscal year, could result in the savings of state resources by preventing a potential redistribution of AEIDF revenue to private parties. The provisions of current law that could result in AEIDF revenue transferred to private parties are described in detail below.

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 2021.¹

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

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

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).² 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.

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.

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.³

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**.

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

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

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. MDARD has 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 Bill 4599 Fiscal Impact

Among other things, House Bill 4599 would strike section 20(19) of the Horse Racing Law, eliminating the current \$8.0 million ceiling on the amount allocated to the AEIDF in a fiscal year. In eliminating the ceiling, the bill would prevent the redistribution of public funds to private parties through the pari-mutuel horse racing disbursement account.

If House Bill 4599 is not enacted, the 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 and for 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% ¹ | 2,819,418 | 2,269,885 | 1,370,087 | 2,748,783 | 2,639,726 | |
| "Outs," licenses, fines, misc. ² | 68,145 | 25,342 | 38,775 | 32,760 | 33,945 | |
| Advance Deposit Wagering ³ | | | 579,527 | 297,574 | 131,590 | |
| Lawful Sports Betting | | | | 269,819 | 579,220 | |
| Internet Gambling Act | | | | 3,000,000 | 3,000,000 | |
| AEIDF Revenue | \$2,887,563 | \$2,295,227 | \$1,988,389 | \$6,348,936 | \$6,384,481 | |
| Civil Service Assessment | (448) | (600) | (361) | (323) | (21) | |
| Transfer to DCH, Problem Gambling | | | | | | |
| GF/GP Transfer | | | | | 3,200,000 | |
| Net AEIDF Revenue | \$2,887,115 | \$2,294,627 | \$1,988,028 | \$6,348,613 | \$9,584,460 | |
| 1. Simulcast wagering tax established under Section 22 of the Horse Racing Law of 1995. | | | | | | |
| 2. Various license fees, fines, and other revenue sources established in the Horse Racing Law of 1995. | | | | | | |
| 3. Advance Deposit Wagering became effective in 2020. | | | | | | |
| Source: Revenue reports from SIGMA reporting tools. | | | | | | |