

**Department of Revenue
Reorganization to regulate Gaming**

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Agency (011)

<http://revenue.wyo.gov>

**As required under HEA 94
Original House Bill 2**

**Of the Sixty-Fifth Legislature of the State of Wyoming
2020 Budget Session**

Overview

House Enrolled Act 94, Original House Bill 2 directs the Department of Revenue (Department) to conduct a study of the feasibility of creating a gaming division within the Department, to consolidate and oversee the regulation of skill games allowed under the exceptions to criminal gambling under W.S. 6-7-101(a)(iii), online gambling, the pari-mutuel commission and the Wyoming lottery corporation.

The Department is to develop a reorganization plan and method, in cooperation with the pari-mutuel commission (now the Wyoming gaming commission) and the Wyoming lottery corporation, to create a gaming division within the Department. This action is to be taken in accordance with W.S. 9-2-1701 through 9-2-1707, Reorganization of Government.

The Department is to offer recommendations to operate the gaming division within the Department using an enterprise fund to budget operating expenses with excess revenues going to the general fund and any other appropriate funding models.

Finally the Department is to offer recommendations for any legislation needed to implement a gaming division within the Department of Revenue. It is important to note that the Department does not have legal staff so the recommendations presented here will be of a general nature following existing statutes to model the legislation.

Feasibility

W.S. 9-2-1701 “The Wyoming Government Reorganization Act of 1989” establishes a framework for reorganizing the executive branch of state government into a limited number of departments to ensure state resources are used effectively and efficiently. The act outlines the authority of the governor in reorganization, department directors and division heads and provides for methods of reorganization and types of transfer.

Based on the direction of HEA 94, Section 13(a)(i) a “Type 1 transfer” would seem appropriate. “A Type 1 transfer is the transfer of an existing agency or substantially all of the functions and programs of an existing agency to a department. This transfer includes the transfer of all positions, personnel, property and appropriated funds to the department to be used for the purposes specified under existing law until implementation of the legislatively approved reorganization plan. The department is responsible for all the programs and functions of an agency assigned to the department through a Type 1 transfer.”

The Department researched our neighboring states to see if there are organizational structures similar to what is being proposed in this report. The states of Montana and Nebraska operate under a structure similar to the proposed structure of this report. The state of Colorado operates a gaming commission but the commission operates under the Colorado Department of Revenue. This

structure could be a possibility should the legislature choose to retain the commission structure but allow for oversight at the department level. Across the nation there are 18 states which operate their gaming entities as a part of state agency or local government. The remainder operate under a commission or do not allow gambling. Only 2 states in the union, Hawaii and Utah, do not allow any form of gambling.

Wyoming currently prohibits gambling under W.S. 6-7-102 with exceptions to the general prohibition in the definition of Gambling under W.S. 6-7-101(a)(iii). Currently the state has exceptions for the following gambling activities:

Wyoming Lottery

Charitable gambling including bingo and pull tabs and raffles

Pari-mutual gambling

Calcutta gambling

Social Gambling

Skill based amusement gambling (currently sunsets on June 30, 2021)

Tribal Casinos

Additionally the U.S. Supreme Court ruled on May 14, 2018 in *Murphy, Governor of New Jersey v. National Collegiate Athletic Assn.* that the Professional and Amateur Sports Protection Act (PASPA) was unconstitutional. This federal law made it unlawful for a State or its subdivisions to sponsor, operate, advertise, promote, license or authorize by law or compact a lottery, sweepstakes, or other betting, gambling, or wagering scheme based on competitive sporting events... There were “grandfather” provisions which allowed existing forms of sports gambling to continue in four states.

With PASPA struck down states can now allow and regulate sports wagering in their states. Currently the most popular form of sports betting is on-line gaming. Eighteen states and the District of Columbia have legalized sports betting in their states with another 4 states recently passing legislation. Another 9 states have active legislation pending. Wyoming is one of 12 states where proposed legalization failed.

Wyoming’s proposed legislation, HB0225 limited the sports wagering to on-line sports wagering and tasked the Department of Revenue with the administration and regulation of the gaming activity. Should this activity be approved in future legislative action it would only make sense to regulate this activity under the proposed structure.

Current structure

An important aspect of consolidation is an analysis of the structure of the two gaming entities in Wyoming. The Wyoming Gaming Commission (Pari-Mutual Commission) is a state agency (#038) with a staff of 7 employees authorized and an additional 6 contract employees for the summer racing season. The Board of Commissioners is comprised of 9 members, 7 from each

appointment district, appointed by the Governor with consent of the Senate. The remaining 2 members shall be 1 member from county or municipal law enforcement and 1 member shall be an enrolled member of the Northern Arapaho or Eastern Shoshone Indian tribes. Additionally the newly formed Gaming Commission is formed under the Department of Administration and Information under a type 3 transfer.

The budget for the administration of the Wyoming Gaming Commission is \$2.3 million dollars for the biennium. The remaining budget of \$10.9 million dollars is allocated to the Wyoming Breeders Award Fund. The pari-mutual industry in Wyoming generated \$793 million dollars in wagering with \$732.5 Million returned to the public in winnings. The State received \$3.9 million dollars and the City/County where activities occur received \$7.9 million dollars.

The Wyoming Lottery Corporation (Lottery) is a corporate entity operating as an instrumentality of the State of Wyoming. The Lottery is accountable to the legislature through a system of audits and reports. The corporation is governed by a board of directors comprised of 9 members appointed by the governor. The board of directors oversees the budget of the corporation and insures that revenue is maximized, including revenue to the state and local governments. The board also appoints and establishes the salary for the Chief Executive Officer (CEO) of the corporation. The CEO serves at the pleasure of the board.

The Lottery Corporation is staffed by the CEO, 7 full-time staff members and 1 part time draw coordinator. The annual revenues generated from the lottery operations are \$24 Million dollars with cost of sales totaling \$18 Million Dollars. The operating budget for the corporation is \$2.6 Million Dollars.

The ability of the state to create a gaming division within the department of revenue will require changes to the current structure of each organization. Currently the authority to monitor the budgets and procurement of capital assets as well as the establishment or approval of rules rest with the respective Commissions or Board of Directors for each organization. Both the Wyoming Gaming Commission and the Lottery Corporation currently operate essentially as an enterprise fund, taking no money from the state general fund. The revenues generated by each entity fund their operations.

Reorganization Plan

The first step in merging these two separate organizations into a division of the Department of Revenue is to repeal the legislation authorizing the formation and powers of the Commission for the Wyoming Gaming Commission under W.S. 11-25-101 as well as the Board of Directors for the Wyoming Lottery Corporation authorized under W.S. 9-17-104. Additionally the legislation which created the lottery corporation will then need to be abolished with the assets being transferred to the state. The statute currently reads that the Lottery Corporation is an instrumentality of the state which would seem to allow this type of transfer of the corpus of the

corporation. This should however be reviewed by the Attorney General for the exact method for accomplishing this.

The next action would be to create the Gaming Division under the Department of Revenue. This would be accomplished similarly to how the Liquor Commission became the Liquor Division. The language would replace the current language forming the commission as follows:

11-25-101. Wyoming gaming division; created; division administrator; duties.

- (a) As part of the reorganization of Wyoming state government, the Wyoming gaming division is created within the department of revenue. The division shall consist of the programs and functions specified in this title.
- (b) The administrator of the division shall be appointed by the director of the department of revenue and shall in accordance with W.S. 9-2-1706(c) and (d), serve at the pleasure of and may be removed at any time by the director. Subject to the approval of the director, the administrator shall take final agency action with respect to all matters before the division pursuant to this title.
- (c) The division shall administer all programs formerly administered by the Wyoming gaming commission and the Wyoming lottery corporation.

Additionally the statutes regulating the Wyoming Lottery would need to merge with the statutes of the Wyoming gaming division. This could be accomplished by reference in a fashion similar to the Wyoming liquor division.

Employees of the Wyoming Lottery Corporation would be assigned position numbers under the State employment classification system and would be hired as permanent state employees. The appropriate classifications would need to be reviewed by the Human Resources Division of the Department of Administration and Information after drafting job classifications for each staff member.

The accounting and budgeting for the gaming division will be incorporated into the WOLFs and IBAR systems. The Wyoming Gaming Commission is currently set up in this manner. The Lottery corporations assets will need to be set up under the states fixed asset management system while the accounting can be merged with the WOLFs system.

The personnel of each organization have relatively similar workflow. Each has a director for administration of the program, an accounting section, operations management, and a compliance section. Merging these organizations would actually have some level of synergy with the Department of Revenue. The Department of Revenue Excise Tax Division and the Liquor Division have twelve field representatives located throughout Wyoming that could be utilized in the oversight role of gaming. The Lottery and the Gaming Commission each have investigators with law enforcement background, some are certified peace officers.

Another aspect of the compliance role that each organization has involves contracts with third parties to ensure the gaming systems are monitored and are fair to the consumers. The Wyoming Lottery utilizes a company, Intralot, to manage the lottery for the State through a central location with connections to all terminals and Lottery central office. The Gaming Commission has a central server to manage the historical racing terminals located throughout the state. The company that provides this service is United Tote.

The service offered by these companies could be extended to other types of gaming including skill based gaming, video lottery terminals and online sports betting depending on the model chosen. This type of oversight would provide an efficient mechanism for ensuring that the terminals are operating as designed and are legal gaming devices. We believe that there will need to be a review of the providers to determine if a single provider would make sense for all gaming activity. Initially the existing contracts would remain in place but expanded to oversee the other forms of gaming.

Enterprise Fund

Both the Wyoming Gaming Commission and the Wyoming Lottery Corporation essentially operate as an enterprise fund today. Both fund their budgets from the receipts from their respective gaming revenues. The State general fund is not impacted by their budgets. Both agencies function much like the Liquor Division does today. The accounting records from the Wyoming Lottery would need to be rolled into WOLFS and set up as a separate revenue source and budget section of the Gaming Division. The unit would be set up as a separate division of agency 011.

Conclusion

The merger of the Gaming Commission and the Wyoming Lottery Corporation into a division of the Department of Revenue is feasible and has a statutory framework for making the consolidation as outlined above. There are also opportunities for gaining certain efficiencies by merging these entities. Once the merger is complete an evaluation of the efficiencies would look for any duplication of effort, possible consolidation of some contractual services, and leveraging existing staff to provide for effective and efficient regulation of the gaming industry.

There is an option to consider. The State of Colorado has a Gaming Commission that is an agency of the Department of Revenue. Should the legislature wish to retain the Gaming Commission and move the commission to the Department of Revenue, the Commission would retain its authority while moving it through a Type 3 transfer from A&I to the Department of Revenue. Then the Lottery Corporation could be abolished and moved into the Gaming Commission. This would create a structure similar to what Colorado currently does. There would need to be duties realigned in statute for the Director of the Commission but it would allow the oversight to remain with the commission.