

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

## SENATE, No. 1927

### STATE OF NEW JERSEY 217th LEGISLATURE

DATED: SEPTEMBER 23, 2016

- Synopsis:** Provides for regulation of daily fantasy sports games in New Jersey by DLPS.
- Type of Impact:** Annual Net Revenue Increase to State General Fund.
- Agencies Affected:** Division of Gaming Enforcement in the Department of Law and Public Safety.

#### Office of Legislative Services Estimate

| Fiscal Impact                 | <u>Year 1</u>                      | <u>Year 2</u> | <u>Year 3</u> |
|-------------------------------|------------------------------------|---------------|---------------|
| Annual State Revenue Increase | At Least \$5.8 Million             |               |               |
| Annual State Cost Increase    | Indeterminate – See comments below |               |               |

- The Office of Legislative Services (OLS) estimates that the bill will produce an annual net State revenue gain of at least \$5.8 million. The amount reflects \$5.8 million in projected annual revenue collections from a new fee imposed on the gross revenue of daily fantasy sports game operators plus indeterminate collections from new penalties assessed for violations of daily fantasy sports game regulations.
- The Department of Law and Public Safety will incur an indeterminate annual increase in operating expenditures associated with the permitting and regulation of daily fantasy sports game operators; however, the bill requires the department to set and collect permitting fees so that fee collections offset the cost of regulation.

#### BILL DESCRIPTION

Senate Bill No. 1927 (2R) of 2016 provides for the regulation of daily fantasy sports games by the Department of Law and Public Safety.

Beginning on the 90th day after the bill's date of enactment, daily fantasy sports game providers will need a department-issued permit to operate in New Jersey, except that providers offering daily fantasy sports games in this State on the date of enactment will be allowed to continue doing so without a permit if their permit application is pending approval.

A casino permit holder must physically locate all equipment used to conduct daily fantasy sports games in Atlantic City. A non-casino permit holder must physically locate at least one server used to conduct daily fantasy sports games in Atlantic City on or before January 1, 2018.

In return for the right to operate in New Jersey daily fantasy sports game providers will have to pay: a) a recurring permit fee in an amount that covers the department's cost in regulating and overseeing daily fantasy sports games; and b) an annual registration and renewal fee equal to 9.25 percent of daily fantasy sports gross revenue, which the bill defines as the difference between a permit holder's total daily fantasy sports receipts and total prize payouts multiplied by the percentage of total entry fees collected from New Jersey resident players divided by total entry fees collected from all players.

In addition to authorizing the department to adopt rules and regulation to address violations not enumerated in the bill, the legislation specifies the following penalties:

- operating daily fantasy sports games without a permit is subject to a fine of not more than \$25,000 (or not more than \$100,000 if the operator is not a natural person) and to any other disposition authorized by law;
- knowingly tampering with equipment used to conduct daily fantasy sports games to alter a game's odds or payout or disabling the game from operating in accordance with to State rules is subject to a fine of not more than \$50,000 (or not more than \$200,000 if the operator is not a natural person) and to any other disposition authorized by law;
- knowingly offering or allowing to be offered any daily fantasy sports game that has been tampered with in a way that affects a game's odds or payout or disables the game from operating in accordance with State rules is subject to a fine of not more than \$50,000 (or not more than \$200,000 if the operator is not a natural person) and to any other disposition authorized by law;
- violating any other provision of the bill is subject to a fine of not more than \$25,000 (or not more than \$100,000 if the operator is not a natural person) and to any other disposition authorized by law; and
- the department may suspend a provider's operations or revoke a provider's permit.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS estimates that the bill will produce an annual net revenue gain to the State General Fund of at least \$5.8 million. The amount reflects \$5.8 million in projected annual revenue collections from a new fee imposed on the gross revenue of daily fantasy sports game operators plus indeterminate collections from new penalties assessed for violations of daily fantasy sports game regulations.

In addition, the Department of Law and Public Safety will incur an indeterminate annual increase in operating expenditures associated with the permitting and regulation of daily fantasy sports game operators; however, the bill requires the department to set and collect permitting fees so that fee collections offset the cost of regulation.

State Expenditure Increase: The bill requires the department to regulate daily fantasy sports games. Regulatory activities will include the review of permit applications, the inspection and examination of daily fantasy sports game premises, and the oversight of game operations to ensure compliance with State rules and regulations.

These activities will increase annual department operating expenses. The OLS, however, cannot determine the increase's magnitude because of uncertainty regarding the size of New Jersey's future regulated daily fantasy sports market and operational decisions the department will make to implement the bill. Whatever the cost, the bill instructs the department to charge daily fantasy sports game operators a permitting fee that will cover the cost of regulation.

State Revenue Gain: The bill establishes three new State revenue streams: a recurring daily fantasy sports operator permitting fee, penalty collections from violations of regulatory requirements, and an annual registration and renewal fee.

*Permitting Fee:* The department will newly collect recurring revenue from daily fantasy sports operator permitting fees. The OLS, however, cannot determine the collection's magnitude and periodicity for two reasons. First, the bill requires the department to set the fee at a level that covers the department's cost of regulating the industry. But the OLS cannot anticipate the regulatory expenses and, by extension, the level at which the department will set the fee. Second, the bill leaves the frequency of permit renewals to the department's discretion.

*Penalties:* The bill will produce recurring State revenue from several new penalties for violating daily fantasy sports regulations. Given the emergent nature of fantasy sports industry regulations across the nation, however, the OLS has no information on which to base an estimate of the number and magnitude of future penalty assessments and payments.

*Annual Registration and Renewal Fee:* The OLS estimates that the annual registration and renewal fee equal to 9.25 percent of daily fantasy sports gross revenue, as the bill defines the term, might result in annual State revenue collections of about \$5.8 million, assuming that the bill will not alter the size of New Jersey's daily fantasy sports market. Annual fee collections can be expected to fluctuate in tandem with industry gross revenue.

In the absence of information on New Jersey daily fantasy sports gross revenue, the OLS uses national Fantasy Sports Trade Association (FSTA) data for its analysis. The association estimates that 18 percent of adults in the United States play fantasy sports and that the average player aged 18 and above spends \$502 combined on daily fantasy sports (\$318) and traditional fantasy sports (\$184) over a 12-month period. For purposes of this estimate, the OLS assumes that traditional and daily fantasy sports will both be subject to the provisions of this bill.

Given the United States Census Bureau estimate that about 6.9 million residents aged 18 and above lived in New Jersey on July 1, 2014, if 18 percent thereof play fantasy sports, then about 1.25 million New Jersey residents participate in fantasy sports.

If each New Jersey player spends the FSTA-reported \$502 national average on fantasy sports, then New Jersey players cumulatively spend \$625.8 million on fantasy sports.

The bill applies the 9.25 percent tax rate to a daily fantasy sports game operator's gross revenue, or a permit holder's total daily fantasy sports game receipts less total prize payouts multiplied by the percentage of total entry fees collected from New Jersey resident players divided by total entry fees collected from all players.

According to news reports, fantasy sports operators collect a "rake" of about 10 percent of entry fees with specific rates varying by game. If game operators receive 10 percent of the estimated \$625.8 million in annual fantasy sports expenditures of New Jersey residents as taxable gross revenue, then about \$62.6 million will become taxable. At the 9.25 percent tax rate annual State revenue collections will therefore approximate \$5.8 million.

*Section: Law and Public Safety*

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).