PREPARED BY: DATE PREPARED: PHONE: Doug Gibbs March 23, 2015 402-471-0051

LB 70

Revision: 03

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

Revised due to adoption of amendment and additional information.

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)								
	FY 201	5-16	FY 2016-17					
_	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE				
GENERAL FUNDS	\$50,000	See Below	\$50,000	See Below				
CASH FUNDS		See Below		See Below				
FEDERAL FUNDS								
OTHER FUNDS								
TOTAL FUNDS	\$50,000	See Below	\$50,000	See Below				

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 70, as amended by AM118 and AM235, amends the Mechanical Amusement Device Act.

AM118 adds new language to the Act that imposes an additional occupation tax on mechanical amusement devices that meet the following criteria:

- a) Accept currency, coins, tokens, or other value in exchange for play;
- b) Awards a monetary prize or anything redeemable for a monetary prize;
- c) Is played by a player using a touch screen, computer mouse, touch pad, light pen, laser, or device of similar function by which a player competes against software running the device; and
- d) Has not been adjudicated by a court to not constitute a gambling device.

The burden of proving the device is not taxable is placed on the operator.

The amount of the tax is to be equal to ten percent of the gross revenue derived from the operation of the device. The Tax Commissioner is to collect the occupation tax in the same manner that the state sales tax is collected.

Gross revenue is defined as the total aggregate receipts received from the operation of any mechanical amusement device without any reduction for prizes, discounts, taxes, or expenses. It includes receipts from admission cost, any consideration necessary for participation and the value of any free tickets, games or plays.

AM235 provides that of the revenue collected, 97% is to be credited to the General Fund and 3% is to be credited to the Compulsive Gamblers Assistance Fund.

The bill now contains the emergency clause.

Because of the variables involved, (number of machines statewide, gross revenue per machine), that are unknown, we are unable to determine an accurate estimate of fiscal impact.

The Department of Revenue indicates the cost to implement the provisions of LB 70, as amended, will be approximately \$97,921 in FY2015-16 and \$10,000 in FY2016-17. This includes \$87,921 for one-time IT development costs paid to the Office of the CIO. It also includes \$10,000 each fiscal year for the services of an independent testing laboratory to resolve a tax protest and assuming one protest annually.

We disagree with the Department of Revenue's estimate of cost and believe the Department can absorb the cost associated with the IT development. We also disagree with the Department's estimate of costs necessary to resolve tax protests as a result of LB 70. We believe that cost will be \$50,000 per fiscal year based on five protests per fiscal year.

State Agency Estimate								
State Agency Name: Department of Revenue			Date Due LFA:					
Approved by: Len Sloup	Len Sloup Date Prepared:		3/12/2015 Phone: 471-5896					
	FY 2015-2016		FY 2016-2017		FY 2017-2018			
	Expenditures	Revenues	Expenditures	Revenues	Expenditures	Revenues		
General Funds	\$97,921		\$10,000		\$10,000			
Cash Funds		See below		See below		See below		
Federal Funds								
Other Funds								
Total Funds	\$97,921	See below	\$10,000	See below	\$10,000	See below		

LB 70, as amended by AM 118 and AM 235, imposes an occupation tax on businesses operating mechanical amusement devices (1) that accept value (currency, coins, tokens) in exchange for play; (2) that award monetary prizes or anything redeemable for a monetary prize; (3) where the player competes against software running the device; and (4) which have not been adjudicated to not be gambling devices by a court of competent jurisdiction within the State of Nebraska. Any adjudication must be a final order in which the Tax Commissioner has been made a party and written notice was provided to the Attorney General at the commencement of the action.

The occupation tax is 10% of the aggregate (gross) receipts received from the operation of the mechanical amusement device. The occupation tax is collected by the Department of Revenue in the same manner as the sales tax. The State Treasurer will credit 97% of the revenue from the tax to the General Fund and 3% of the revenue from the tax to the Compulsive Gamblers Assistance Fund.

An operator of a mechanical amusement device may claim the device is not subject to the occupation tax by presumably filing a protest with the Department of Revenue.

The occupation tax is exempt from sales tax, unless the owner of a device subject to the tax is delinquent in payment of the tax. The Tax Commissioner may impose a penalty and seize the device for nonpayment of the tax.

Departmental cost to implement LB 70 as amended by AM 118 and AM 235 includes \$87,921 in one-time IT Development costs paid to the OCIO. If an operator claims that a device is not subject to the occupation tax as allowed in subsection (2) of section 3 of the E & R amendments, the Department would engage the services of an independent testing laboratory to resolve the protest. This cost is estimated to be \$10,000 each fiscal year assuming one protest annually. The Department is unable to determine the General Fund impact due to a lack of available data.

Major Objects of Expenditure							
Class Code	Classification Title	15-16 <u>FTE</u>	16-17 <u>FTE</u>	17-18 <u>FTE</u>	15-16 <u>Expenditures</u>	16-17 <u>Expenditures</u>	17-18 Expenditures
					\$97,921	\$10,000	\$10,000
Capital Outlay							
	nts						
Total		•••••		•••••	\$97,921	\$10,000	\$10,000