

**SOUTH CAROLINA EDUCATION LOTTERY
BOARD OF COMMISSIONERS MEETING MINUTES
December 9, 2020
10:00 a.m.**

The Board of Commissioners of the South Carolina Education Lottery (SCEL) met on Wednesday, December 9, 2020, at 10:04 a.m., at 1333 Main Street, Columbia, South Carolina, First Floor Conference Room, with the following members, representing a quorum, participating:

Sam Litchfield, Chairman (in person)	Patrick Earle (in person)
Dr. Edward Keith, Vice Chairman (in person)	Richard Chapman (video)
Keith Munson, Secretary/Treasurer (in person)	William Newsome (video)
Otis Morris (in person)	

The Chairman called the meeting to order and welcomed guests. He then welcomed Commissioner Earle to the Board, who was recently appointed by the Speaker of the House. The Chairman also introduced Sonja Erickson, SCEL's new Internal Auditor.

Approval of Minutes

On motion of Commissioner Munson, seconded by Commissioner Morris, the Board approved the September 16, 2020, minutes unanimously.

Election of Board Officers

The Chairman asked for nominations of officers other than those currently serving, and after receiving none, Commissioner Keith moved to close the nominations and elect the current slate of officers for another one-year term in accordance with the by-laws. Commissioner Morris seconded the motion, which passed unanimously.

Action items

Committee Report

The Chairman recognized Commissioner Morris to report on actions taken by the Marketing and Retailer Relations Committee on November 10, 2020. He reported that two game add-ons were reviewed: Fireball for Pick3 (P3)/Pick4 (P4) and Double Play for Powerball. The committee voted to recommend Board approval of these two game add-ons. Commissioner Morris asked Ms. Ammie Smith, Director of Product Development, to explain the new game features.

a. Fireball

Ms. Smith reminded the Board that her team was tasked with examining ways to replace revenue from the discontinuance of Lucky for Life next June. Before discussing the add-ons, Josh Whiteside, Director of Marketing, presented the updated logos for the rebranding of P3 and P4 that have remained virtually untouched since 2002.

Several states have successfully launched Fireball type add-ons, while Virginia and Florida are planning to launch this play option. SCEL's planned add-on is most similar to Texas. Ms. Smith then explained the key features. With purchase of the underlying game, a player may add Fireball to any play option (wager). After the P3 and P4 base game drawings, one Fireball number is drawn from a set of 10 balls (0-9) that is used to replace any one of the numbers drawn for P3 or P4 to create new winning combinations. All Fireball prizes are in addition to a base game win and a player can win Fireball prize(s) without winning on the base game. Ms. Smith reviewed the

proposed prize structure that has better odds and more ways to win than a comparable P3 or P4 wager. In response to questions, Ms. Smith stated that the P3/P4 base game would remain unchanged and that minimal cannibalization of other draw games is expected.

Motion Adopted

With the conclusion of questions, the Chairman stated that the motion before the Board is approval of Fireball as recommended to the Board by the Marketing and Retailer Relations Committee. As such, pursuant to the by-laws, a second is not needed. The Board adopted the motion unanimously and directed staff to proceed with the necessary steps to implement this add-on in 2021.

b. Double Play

Ms. Smith explained that offering the Powerball Double Play add-on feature began during Multi-State Lottery Association (MUSL) discussions to add a third draw day per week. While not all MUSL jurisdictions are planning to offer Double Play on the anticipated launch date in August 2021, this schedule allows SCEL to market both game changes as part of the same promotion. For an additional \$1 wager, MUSL draws a second set of numbers, giving a player a second chance of winning. The Double Play prize structure is more concentrated on low/mid-tier prizes without a chance to win the Powerball Jackpot. Mr. Joe Boyle, Chief Financial Officer, stated that he expects a \$1.6M increase of revenue from Double Play.

Motion Adopted

At the conclusion of Ms. Smith's presentation, hearing no additional questions, the Chairman stated that the motion before the Board is approval of Double Play as recommended to the Board by the Marketing and Retailer Relations Committee. As such, pursuant to the by-laws, a second is not needed. The Board adopted the motion unanimously and directed staff to proceed with the necessary steps to implement Double Play in 2021.

c. Quarterly Advertising Review

The Chairman recognized Ms. Smith and Mr. Whiteside to present the quarterly advertising review.

SPACE INVADERS™ Instant Game - Steel Hands Brewery Event Slides, Promotional Items, Floor Graphics, Sandwich Boards and Digital Billboard.

Carolina Gem Series Instant Games - Digital Billboard, PID, and Ticket Topper: Black Sapphire, Black Ruby, Black Emerald and Black Diamond.

Holiday Games Instant Games - Digital Billboard, Online Ad, Ticket Topper, and PID: Merry Money and Stocking Stuffer.

General PID Updates - Drawing Background: Midday and Evening; Instant Games (8 Second PID Video - WMV Files): Fabulous Fortunes, Wrapped In Gold, Hit \$100, Fast 5X, Ca\$h-tastic, \$200K Cash, Money Bag Multiplier, Lucky 13, HIT \$250 and \$300,000 Riches.

Beneficiary - College of Charleston - Concourse Television; Furman Program.

Mr. Whiteside then presented storyboards for a Play Responsibly message using a fully animated pinball machine where the bumpers contain excessive gambling warning messages. Next, he discussed "Tiny Stories 2", for which commercials were shot in November.

Upon conclusion of the Advertising and Social Media Report, the Chairman stated, without objection, that it was the consensus of the Board that the advertising concepts presented do not

target with the intent to exploit specific ethnic groups or economic classes of people, and that the content is accurate and not misleading.

d. Dragon's Ascent

The Chairman recognized Mr. Hogan Brown to discuss various aspects of the Dragon's Ascent game and then request an action by the Board at the end of his remarks. While asking if there were any questions regarding the materials sent prior to the meeting, Commissioner Munson explained that a former member of his legal firm is involved with Dragon's Ascent. Although he does not know if the former member was working on the project while with the law firm, out of an abundance of caution, Commissioner Munson is not participating in this matter as provided in the Ethics Act. Commissioner Newsome also stated that he is not participating in consideration of this matter, out of an abundance of caution, because one of his former law partners is also now involved in Dragon's Ascent. As required by S.C. Code Ann. § 8-13-700(B)(4), for the reasons presented, both Commissioners are "excused from any votes, deliberations, and other actions" on this matter and statements as required by this provision for each Commissioner are incorporated into the minutes as Attachments A and B and will be posted upon approval of the meeting minutes.

Mr. Brown began by explaining that the proponents (Proponents) of Dragon's Ascent wanted to obtain SCEL's "buy-in" to offer this video game before they pursued legislation to suspend or remove the statutory prohibitions that prevent the sale of this game. They also want SCEL to oversee the administration of this game. Initially, it was represented that absent SCEL's buy-in, a legislative change would not be sought. Mr. Brown stated that he has since learned that the Proponents may reach out to the appointing authorities and legislators directly and by-pass SCEL staff or its Board of Commissioners.

The Proponents acknowledge that whether Dragon's Ascent is a game of skill or chance is irrelevant under the SC Supreme Court's analysis, and that the game cannot be offered without amending or suspending the application of the statutes outlawing video poker. Several provisions of the Lottery Act and Regulations expressly prohibited SCEL from offering games prohibited by those statutes. If the Lottery Act provisions are not amended, the Proponents indicated they would seek to suspend the video poker statutes via budget proviso allowing or requiring SCEL to offer and regulate Dragon's Ascent arguing that unlike video poker, it is a game of skill.

Whether Dragon's Ascent is a game of skill or chance, its success as a revenue generating game is dependent on repetitive play. While some may argue the game is not addictive, it ignores the nature of all video games, legal or otherwise, in that these games offer immediate feedback (win, loss, experience) and repetitive play, "the thrill" of anticipating a win on the next play or the one after that. To acquire a higher level of "skill" in any endeavor requires practice: More and more back-to-back play means a player is much more likely to spend beyond his or her budget, often not realizing it until after the money is spent. Even Keno, which SCEL cannot offer, commonly has five or more minutes between draws, compelling a moment to reflect before the new wager is placed. Soon after the end of video poker, the General Assembly chose not to allow SCEL to offer addictive immediate gratification games. Dragon's Ascent is inconsistent with SCEL's culture and statutory mandate for encouraging socially responsible play as a traditional lottery.

Lottery vendor is defined as a person who provides or proposes to provide goods or services to SCEL "pursuant to a procurement contract..." Proponents assert they are not lottery vendors because, under their proposal, SCEL would not acquire Dragon's Ascent equipment via a procurement contract. Instead, the equipment would be given to SCEL for "resale" to retailers. The notion that some procurement exemption applies or that the S.C. Consolidated Procurement

Code does not govern Proponents proposal, is a position not shared by SCEL's outside procurement counsel. Not being a lottery vendor would allow Proponents to: (1) seek a no bid contract with SCEL (as they have thus far done) to offer Dragon's Ascent and provide them with a significant revenue stream and (2) hire lobbyists. Under the Lottery Act, lottery vendors and SCEL are not allowed to hire lobbyists "for the purpose of influencing a political decision in connection with the operation of the lottery...." Irrespective, Proponents informed Mr. Brown that a legal entity will be created to hire lobbyist in a manner they believe is appropriate.

Mr. Brown then reviewed various aspects of the Proponent's proposal and material they provided to staff relating to the deployment of Dragon's Ascent that were included in the Commissioners' meeting packages. The proposed business model would result in approximately 20k machines located in bars, restaurants, and convenience stores rolled out over several years. Although Proponents have provided a revenue distribution model, it is difficult to determine whether a lottery retailer would find Dragon's Ascent to be more profitable than traditional lottery products. It has been suggested in the Proponents materials that there would be little, if any, cannibalization of sales in other lottery products with net proceeds of as much as \$50M per year, when full deployment is reached. Mr. Brown believes cannibalization is an issue that has been demonstrated in other jurisdictions where traditional lottery sales have been affected by video gaming machines.

In sum, Proponents asked SCEL, through Mr. Brown, (1) to commit to, or not oppose, offering Dragon's Ascent without a competitive bidding process, applicable to all other SCEL vendors and (2) to do so via a temporary one-year Appropriation Act proviso thereby avoiding the normal, more stringent legislative review process. These efforts are to be led, at least in part, by paid lobbyists making it appear the lobbying is being done to further SCEL's interests, contrary to our Act.

Several Commissioners asked questions ranging from the adoption of a proviso to change SCEL operations, which has not happened before, to the addictiveness, to proliferation of video gambling devices that occurred prior to SCEL's creation and briefly a few years ago. Concern was expressed that SCEL's image will suffer if this type of game is allowed by the General Assembly because it would be the first repetitive, addictive play style to be allowed since 2001. Irrespective of the Proponents view of the law or their approach to removing the statutory prohibitions needed to allow Dragon's Ascent, the question is whether offering this game is in the best interest of SCEL.

Mr. Brown, as Executive Director, does not believe it is appropriate for staff to respond to the SCEL buy-in or acquiesce to what Proponents are seeking. Rather, the appropriate course, based on his experience, is to offer the following recommendation to the Board for consideration.

While the General Assembly determines which types of lottery games may be lawfully offered for purchase in South Carolina, the Board of Commissioners of the South Carolina Lottery Commission has a responsibility to state its position pertaining to Dragon's Ascent. The Board is steadfastly committed to promoting fair and responsible play and does not support or endorse offering any game that requires an exemption to, or the suspension of, the express prohibitions codified in the South Carolina Code of Laws Sections 12-21-2710, 16-19-40, and 16-19-50 (making video poker and other games of chance and skill illegal). This non-traditional game is inconsistent with responsible play by motivating repetitive play that often leads to excessive or compulsive spending, jeopardizing the integrity of lottery operations, games, and potentially lottery proceeds for education (that have grown from \$400.3 million in FY17 to \$492.8 in FY20). In adopting the Lottery

Act in 2001, the General Assembly made the wise policy decision to not allow the Lottery to offer this form of addictive gaming and this prohibition should remain.

Motion Adopted

At the conclusion of further discussion, the Chairman asked the Board of its wishes on this matter. Commissioner Keith (Dr. Edward Keith) moved to adopt the statement suggested by Mr. Brown as presented above. Commissioner Morris seconded the motion, which was adopted unanimously, with exception of the previously mentioned abstentions.

Reports

Financial Report

The Chairman recognized Mr. Boyle, Chief Financial Officer, who provided a high-level overview of his written presentation, submitted to the Board in the meeting materials prior to the meeting.

Actual FY21 Results Compared to Actual FY20 Results – First Four Months

Overview

Transfers increased by \$42M from \$163M to \$205M (25.8%). Overall Game Revenues increased by \$122.9M to \$759.5M (19.3%). Net Income increased by \$41M to \$190.1M (27.5%). The significant aggregate Revenue increases starting in April 2020, continued through October 2020. The BEA transfer estimate was increased from \$467.3M to \$520M this fall.

Instant Games

Instant Game Revenues increased by \$89.6M to \$566.5M (18.8%), mainly attributable to an increase of \$82.2M (23.6%) in \$10 Tickets. Revenue increased for all other Instant Games as well. Overall Instant Game Margin Revenues increased \$24.4M (19.0%), while the overall Game Margin Percentage was 27.1% compared to 27.0% during the same period last year.

Terminal Games

Terminal Game Revenues were \$193.1M, up \$33.3M (20.9%), due to significant increases in Pick 3 and Pick 4. Palmetto Cash 5 Revenues increased while other Terminal Games decreased. Palmetto Cash 5 Revenues increased by \$1.6M (20.9%). Pick 3 and Pick 4 Revenues increased by \$24M (31.9%) and \$10.8M (29.1%), respectively. In aggregate, Pick 3 and Pick 4 Game Margin increased by \$25M. Powerball and Mega Millions Revenues were down slightly through the first four months of FY21 as, like last year, there have been no jackpot runs. Overall, Terminal Game Margin Percentage was 54.1% compared to 49.5% during the same period last year.

Advertising and G&A Expenses

Advertising Expense was \$2.9M, down from \$3.3M in FY20. G&A Expenses (the primary component of which is employee compensation) were \$5.2M, up from \$4.8M in FY20.

Actual FY21 Results Compared to the FY21 Financial Plan – First Four Months

To date, actual financial results are above Plan. Game Revenues were \$759.5M compared to Plan of \$620.7M. All Instant Games are above Plan. The largest variances are attributable to \$5 and \$10 Instant Tickets, which are above Plan by \$5.4M (7.4%) and \$88.5M (28.9%), respectively. The \$1 Instant Tickets is \$1.5M (13.8%) above Plan. Additionally, \$2 and \$3 Instants Tickets are above Plan by \$3M (7.2%). All Terminal Game Revenues exceeded Plan, with Pick 3 and Pick 4 having the largest variances: Pick 3, \$23.2M (30.4%) above, and Pick 4, \$10.2M (27%) above. Powerball and Mega Millions are \$2.9M (17.2%) and \$2.0M (19.5%) above Plan. Palmetto Cash 5 is \$1.8M (24.1%) above Plan. Lucky for Life is \$.2M (5.8%) above Plan.

Due to the higher than planned Game Revenues, Gross Profit (Revenues less Prize Expense, Commissions and other game-related costs) is \$198.2M, or \$43.8M (28.4%) above Plan.

In aggregate, Operating Expenses are \$0.3M under Plan. Advertising Expense is \$2.9M, Actual vs. Plan of \$3.3M. Other Operating Expenses (“G&A”) are within \$.1M of Plan. Variances should normalize to Plan as the year progresses. Net Income is \$190.1M, \$44.1M (30.2%) above Plan.

Executive Director’s Report

The Chairman recognized Mr. Brown who began by discussing the relocation of the instant ticket warehouse under the new Instant Printing, Warehousing, and Distribution contract with Scientific Games. The new warehouse was built from the ground up with 70k square feet versus 50k in the old space. The old space had four pick and pack lines, whereas the new warehouse has six and can grow to eight. While the warehousing costs have increased (\$37.5k per month) under the new contract, printing costs are roughly the same, and annual distribution costs are lower (approximately \$300k) due to using a nationwide shipping contract available to state entities. Mr. Brown also thanked Rick Barnhill, SG Warehouse Manager, for his hard work and dedication to SCEL.

Next, Mr. Brown mentioned that the Powerball international sales effort was delayed for several reasons. Drafting a detailed agreement has been tedious and an issue has arisen with TABCORP. In 2017, a \$45M civil fine was imposed against the company for failing to report certain winner and wagering information from 2010-2014 that was intended to reveal potential money laundering in racetrack gambling. TABCORP did not participate in a money-laundering scheme; it failed to comply with reporting requirements.

Mr. Brown briefly reviewed sales charts distributed at the meeting to highlight recent sales and show comparisons to comparable sales from the previous year.

Mr. Brown also mentioned the meeting dates for calendar year 2021 noting some meeting dates were scheduled a bit later than normal to allow time for Mr. Boyle to provide a more up-to-date financial report.

Other Business

There being no further business, the meeting adjourned at 12:11 p.m.

/s/

Sam Litchfield, Chairman

/s/

Keith Munson, Secretary/Treasurer

As required by *S.C. Code Ann.* § 30-4-80, SCEL posted notification for this meeting at its administrative offices, 1333 Main Street in Columbia. As provided in the Board Bylaws, SCEL also posted the meeting notice and agenda on its website (sceducationlottery.com), and sent emails pursuant to requests made by individuals, media outlets and other organizations. These notifications included the time, date, place, and agenda of the meeting.

South Carolina Education Lottery Commission

STATEMENT OF POTENTIAL CONFLICT OF INTEREST¹

TO: Chairperson, or Presiding Officer, of the South Carolina Educational Lottery Commission

FROM: Keith D. Munson
(Commission's Name)

A conflict of interest may arise when a Commissioner, a member of his/her immediate family, an individual with whom he/she is associated, or a business with which he/she is associated has an economic interest in a decision or action of the Commission. Pursuant to South Carolina Code Section 8-13-700(B), I make this statement concerning a conflict or potential conflict of interest as contemplated by the Ethics, Government Accountability Campaign Reform Act of 1991, and the Area Commission Code of Conduct, Section 1:

A. The matter requiring action or decision is as follows:

Meeting Date: 9th day of December, 2020.

Subject/Description: Agenda Item 4(d) - Dragon's Ascent. It has been brought to my attention that a former partner from my firm from a different office is working with the proponent of this agenda item and that he worked with the proponent or its affiliates while he was associated with the firm to which I am associated. I did not do work for the proponent, but recognize the technical conflict or appearance of a conflict that makes absentia appropriate.

B. The nature of my potential conflict is as follows:

I have an economic interest which will be affected by the action.

A member of my immediate family or an individual with whom I am closely or economically associated has an economic interest which will be directly affected.

A business with whom I am associated has an economic interest which will be affected.

I hereby withdraw from any discussion, deliberations, votes or other actions on this matter and request that this fact be noted in the minutes and this form attached thereto.

Keith D. Munson (Sign)
Keith D. Munson, Commissioner
Date: December 2, 2020

Tom Littlefield (Sign)
_____, Presiding Officer
Date: Dec 9, 2020

¹ The Preamble to the Ethics Reform Act provides that "it is inevitable that conflicts of interest [] will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this state must be certain that it is the interest of the people, and not their own, that are being served."

SOUTH CAROLINA CODE SECTION 8-13-700
(DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST)

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a **written statement** describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

...

(5) if he is a public member, he shall **furnish a copy to the presiding officer** of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause **the statement to be printed in the minutes** and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

...

South Carolina Education Lottery Commission

STATEMENT OF POTENTIAL CONFLICT OF INTEREST¹

TO: Chairperson, or Presiding Officer, of the South Carolina Educational Lottery Commission

FROM: **Billy Newsome**
(Commissioner's Name)

A conflict of interest may arise when a Commissioner, a member of his/her immediate family, an individual with whom he/she is associated, or a business with which he/she is associated has an economic interest in a decision or action of the Commission. Pursuant to South Carolina Code Section 8-13-700(B), I make this statement concerning a conflict or potential conflict of interest as contemplated by the Ethics, Government Accountability Campaign Reform Act of 1991, and the Area Commission Code of Conduct, Section 1:

A. The matter requiring action or decision is as follows:

Meeting Date: 9th day of December, 2020.

Subject/Description: Agenda Item 4(d) - Dragon's Ascent. It has been brought to my attention that my former law firm Nexsen Pruet represents the proponent of this agenda item and, although I left the firm almost 3 years ago, it is possible that Nexsen Pruet represented the proponent or its affiliates while I was associated with the firm. I did not do work for the proponent but recognize the appearance of a conflict makes absentia appropriate. (Include Agenda Item No., if applicable).

B. The nature of my potential conflict is as follows:

- I have an economic interest which will be affected by the action.
- A member of my immediate family or an individual with whom I am closely or economically associated has an economic interest which will be directly affected.

A business with whom I was previously associated has an economic interest which will be affected.

I hereby withdraw from any discussion, deliberations, votes or other actions on this matter and request that this fact be noted in the minutes and this form attached thereto.

/s/ _____ (Sign)

Billy Newsome, Commissioner

Date: December 2, 2020

/s/ _____ (Sign)

Sam Litchfield, Presiding Officer

Date: Feb. 17, 2021

¹ The Preamble to the Ethics Reform Act provides that "it is inevitable that conflicts of interest [] will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this state must be certain that it is the interest of the people, and not their own, that are being served."

SOUTH CAROLINA CODE SECTION 8-13-700
(DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST)

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a **written statement** describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

...

(5) if he is a public member, he shall **furnish a copy to the presiding officer** of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause **the statement to be printed in the minutes** and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

...