



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** Sub. H.B. 195 of the 129th G.A. (LSC 129 1079-7)      **Date:** January 24, 2012  
**Status:** In House State Government & Elections      **Sponsor:** Reps. Anielski and Baker

**Local Impact Statement Procedure Required:** No

**Contents:** Licensing and regulation of sweepstakes terminal device operators and distributors

### State Fiscal Highlights

- **Licensing revenues.** As the bill's licensing fees have yet to be determined and the total number of potential license holders is unknown, the total amount of revenue that is likely to be generated annually for deposit in the Casino Control Commission Fund (Fund 5HS0) is unknown as well.
- **Regulation and enforcement costs.** The new duties prescribed by the bill serve as an expansion of the Casino Control Commission's original mandate and are expected to increase its operating expenses in the future to some degree. The annual magnitude of that likely expenditure increase is uncertain.
- **Criminal records checks.** The Attorney General's Bureau of Criminal Identification and Investigation will likely experience an increase in the number of requests for criminal background checks, with the revenues generated likely to offset any expenditures incurred. The revenues will be credited to, and the expenditures charged against, the General Reimbursement Fund (Fund 1060).
- **Incarceration expenditures.** GRF-funded incarceration costs may increase, as additional felony offenders could be convicted and sentenced to prison. The annual magnitude of that potential increase is uncertain.
- **Court cost revenues.** Annually, the state may gain a minimal amount of locally collected state court cost revenues that would be divided between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

## **Local Fiscal Highlights**

- As a result of violations of the bill's prohibited conduct, additional misdemeanor and felony criminal cases may be generated for county and municipal criminal justice systems to process, potentially producing a minimal annual increase in their costs to investigate, prosecute, adjudicate, and sanction violators. A minimal annual amount of revenue in the form of court costs and fines may also be generated.
- If the legislative authority of a municipality or the unincorporated area of a township adopts an ordinance or resolution affirmatively allowing the operation of a sweepstakes terminal device in its jurisdiction, that municipality or township is permitted to charge fees above those charged by the Casino Control Commission.

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## Detailed Fiscal Analysis

The bill provides for the licensing of distributors and operators of sweepstakes terminal devices and makes changes to bingo and other gambling laws.

### **Licensing of sweepstakes terminal device distributors and operators**

The bill provides for the licensing and regulation of operators and distributors of sweepstakes terminal devices by the Ohio Casino Control Commission. Beginning July 2, 2011, the Ohio Casino Control Commission assumed jurisdiction over the regulation of skill-based amusement machines.<sup>1</sup> Licensing of skill-based amusement machine operators and distributors is not required under current law or by the bill.

#### **Casino Control Commission**

##### **Operating expenses**

The duties prescribed by the bill serve as an expansion of the Commission's original mandate and are expected to increase its operating expenses in the future to some degree. The annual magnitude of that likely expenditure increase is uncertain.

##### **Licensing revenues**

The bill requires that sweepstakes terminal device operators and distributors obtain a license from the Commission before they may legally operate in the state. The amount of the fee is not set forth in the bill. Rather, the Commission is authorized to set the license and additional processing fees by rule at a later time. The fees will be deposited to the credit of the Casino Control Commission Fund (Fund 5HS0), which is used to finance the Commission's operating expenses. As the fees have yet to be determined and the total number of potential license holders is unknown, the total amount of revenue that is likely to be generated annually is unknown as well.

##### **Central system expenditures**

The bill also allows the Commission to adopt rules to authorize a central system for sweepstakes terminal device operators. Current law already provides for a central reporting system for casino operators and defines it as a computer system that provides security, auditing, data and information retrieval, and other purposes deemed necessary and authorized by the Commission related to casino gaming equipment. If the central system is only used for sweepstakes terminal device operators, those operators will be responsible for the costs of the system.

#### **Office of the Attorney General**

The bill requires that all persons licensed to be a sweepstakes terminal device distributor or a sweepstakes terminal device operator obtain a criminal records check. The Attorney General's Bureau of Criminal Identification and Investigation (BCII)

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<sup>1</sup> Am. Sub. H.B. 519 of the 128th General Assembly.

charges \$22 to perform a state criminal records check and an additional \$24 to obtain information from the FBI to perform a federal criminal records check. Presumably, these charges will offset BCII's cost of performing the background checks. The revenue will be deposited to the credit of the General Reimbursement Fund (Fund 1060). While the Casino Control Commission will be responsible for initially paying the fee, the licensing applicant is required to remit reimbursement to the Commission.

### Local governments

The bill states that, within six months after its effective date (or within six months after incorporation of a municipal corporation), the legislative authority of a municipality or the unincorporated area of a township may adopt an ordinance or resolution affirmatively allowing the operation of a sweepstakes terminal device in its jurisdiction. If such an ordinance or resolution is adopted, these local governmental jurisdictions may charge fees above those charged by the Casino Control Commission.

### Criminal prohibitions

The bill creates several new criminal prohibitions and provides for the expansion of an existing prohibition against operating a gambling house. These prohibitions and related penalties are summarized in Table 1 below.

Table 1. Criminal Prohibitions and Penalties				
Prohibited Conduct	Degree of Offense	Possible Term of Incarceration	Maximum Fine	ORC
<b><u>New offenses</u></b>				
Sweepstakes terminal device prohibited conduct	1st degree misdemeanor (for each prize redemption)	6-month jail term	\$1,000	2915.062(B)
	Felony of the 5th degree (if previously convicted of same offense for each prize redemption)	6, 7, 8, 9, 10, 11, or 12-month prison term*	\$2,500 (mandatory maximum)	
Conducting an illegal sweepstakes	4th degree felony	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18-month prison term*	\$5,000	2915.062(C)
Conducting slot machine prohibited conduct	4th degree felony	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18-month prison term*	\$5,000	2915.063
<b><u>Expanded offense</u></b>				
Operating a gambling house • <i>Expanded to include conductors of sweepstakes terminal devices and slot machines</i>	1st degree misdemeanor	6-month jail term	\$1,000	2915.03
	5th degree felony (if previously convicted of same offense)	6, 7, 8, 9, 10, 11, or 12-month prison term*	\$2,500	

\*Sentencing guidance in existing law has a general preference against a prison term for a felony of the fourth or fifth degree.

Subsequent to enactment, it is highly likely that some number of individuals will be arrested, charged, and prosecuted for violating the bill's prohibited conduct. However, the number of violations likely to occur statewide or in any given local jurisdiction is unknown. The paragraphs below outline the state and local government cost points that are typically affected when criminal prohibitions are enacted or expanded, and as a result, additional criminal cases are created for local jurisdictions to process.

### **Local expenditures and revenues**

As a result of violations of the bill's prohibited conduct, additional misdemeanor and felony criminal cases will likely be generated for county and municipal criminal justice systems to process, potentially increasing their costs to investigate, prosecute, adjudicate, and sanction violators. Misdemeanors fall under the subject matter jurisdiction of municipal and county courts while felonies fall under the subject matter jurisdiction of courts of common pleas. Revenues in the form of costs and fines imposed on violators by the sentencing court may also be generated, and if collected, deposited in the applicable county or municipal treasury. Any resulting local expenditure increases or revenue gains will likely be minimal.

### **State expenditures and revenues**

As a result of individuals violating the bill's prohibitions, additional felony offenders may be sentenced to prison. Such an outcome would increase the Department of Rehabilitation and Correction's GRF-funded incarceration costs. The potential magnitude of that increase annually is uncertain, as the number of additional felony convictions and associated lengths of stay in prison are unknown. The average annual cost to incarcerate an offender in an Ohio prison is currently around \$25,150, with the marginal cost of adding an offender estimated at between \$4,000 and \$5,000.

Violations of the bill's prohibited conduct will also generate additional state revenue in the form of state court costs that a sentencing court is generally required to impose on individuals convicted of a misdemeanor or felony offense. The likely amount to be collected and deposited in the state treasury annually is likely to be minimal. Under existing law, the amount and distribution of those state court costs is as follows:

- For a misdemeanor, a total of \$29, with \$20 being deposited in the Indigent Defense Support Fund (Fund 5DYO) and \$9 being deposited in the Victims of Crime/Reparations Fund (Fund 4020).
- For a felony, a total of \$60, with \$30 being deposited in Fund 5DYO and \$30 being deposited in Fund 4020.

### **Bingo law changes**

The bill authorizes a veteran's, fraternal, or sporting organization to pay real property taxes and assessments charged against the property where it conducts instant

bingo using any amount of its annual gross profit from the sale of instant bingo.<sup>2</sup> The bill also specifies that charitable organizations may not be required to pay property taxes or assessments charged against real property it leases from another person to conduct bingo. These changes are not expected to have any direct fiscal effect on the state or any of its political subdivisions.

Under current law, these organizations are restricted in using their annual instant bingo net profits. Property taxes are considered an "expense," but are subjected to the limits set forth in the formula, as shown in Table 2 below.<sup>3</sup>

<b>Table 2. Formula for Determining the Usage of Annual Gross Profits from the Sale of Instant Bingo</b>
<b>Of the first \$250,000 in annual gross profit from the sale of instant bingo</b>
<ul style="list-style-type: none"> <li>• Not more than 75% may be used to pay for "expenses"</li> <li>• Remainder must be used for public or charitable purposes</li> </ul>
<b>Of amounts greater than \$250,000 in annual gross profit from the sale of instant bingo</b>
<ul style="list-style-type: none"> <li>• Not more than 45% may be used to pay for "expenses"</li> <li>• Remainder must be used for public or charitable purposes</li> </ul>

As a result of the bill, these property tax expenses may be paid before the formula is factored on the annual gross profit from the sale of instant bingo. In practice, this action should benefit those organizations that have property tax expenses in excess of the 75% portion of the annual gross profit.

## **Synopsis of Fiscal Effect Changes**

The notable differences between the fiscal effects of this substitute bill and those of the As Introduced version are highlighted below.

- The substitute bill removes all references to skill-based amusement machines from the bill, including the licensing of distributors and operators of such devices. As a result, there could be a decrease in licensing revenue, as well as a decrease in anticipated workload increases for the Casino Control

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<sup>2</sup> Instant bingo gross profit equals gross revenues less prize award payments.

<sup>3</sup> "Expenses" means the reasonable amount of gross profit actually expended for all of the following: (1) the purchase or lease of bingo supplies, (2) annual license fees, (3) bank fees and service charges for a bingo session or game account, (4) audits and accounting services, (5) safes, (6) cash registers, (7) hiring security personnel, (8) advertising bingo, (9) renting premises in which to conduct a bingo session, (10) tables and chairs, (11) expenses for maintaining and operating a charitable organization's facilities, including, but not limited to, a post home, club house, lounge, tavern, or canteen and any grounds attached to the post home, club house, lounge, tavern, or canteen, (12) payment of real property taxes and assessments that are levied on a premises on which bingo is conducted, and (13) any other product or service directly related to the conduct of bingo that is authorized in rules adopted by the Attorney General.

Commission from the As Introduced version of the bill. Since the bill also removes provisions related to the prohibited conduct associated with these devices, the anticipated fiscal effects on local criminal justice systems and state incarceration expenses will also not occur.

- The bill requires the Casino Control Commission to adopt rules that describe the certification standards and duties of a software provider for sweepstakes terminal devices. This will likely create a minimal one-time increase in administrative costs for the Commission.
- The substitute bill permits the legislative authority of a municipality or the unincorporated area of a township to adopt an ordinance or resolution affirmatively allowing the operation of a sweepstakes terminal device in its jurisdiction, within six months after the bill's effective date (or within six months after incorporation of a municipal corporation). If such an ordinance or resolution is adopted, these local governmental jurisdictions may charge fees above those charged by the Casino Control Commission.