Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 605 of the 129th G.A. (LSC 129 2900-5)

Date: December 5, 2012

Status: In House Judiciary & Ethics

Sponsor: Rep. Huffman

Local Impact Statement Procedure Required: No

Contents: Schemes of chance

State Fiscal Highlights

- **Office of the Attorney General**. As a result of making "sweepstakes terminal devices" subject to Ohio's Gambling Law, it is possible that the Office of the Attorney General may experience an increase in the number of gambling investigations, specifically as it relates to such devices. It is unknown how many investigations could be initiated annually or if existing staffing levels would be sufficient. Revenue will also be generated from the annual certificate of registration filing fee that the Attorney General is required to adopt and collect from persons conducting a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility.
- **Incarceration costs**. The Department of Rehabilitation and Correction's GRF-funded incarceration costs may increase, as additional felony offenders could be convicted and sentenced to a term in prison, or sentenced to a longer term.
- **Court cost revenues**. The state may gain a minimal annual 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

- **County and municipal criminal justice systems generally.** The net local fiscal effects can be as follows: (1) for municipalities annually, a potential expenditure decrease and a potential revenue loss (court costs and fines), as certain cases elevate from misdemeanors to felonies, and (2) for counties annually, a potential expenditure increase and a potential revenue gain (court costs and fines), due to the imposition of more serious sanctions.
- **Sanctioning costs.** The bill will have a mix of effects on county and municipal sanctioning costs, the net of which is uncertain. First, there may be some savings in municipal sanctioning costs, as certain cases are enhanced to felonies. Second, with

the potential imposition of jail terms on certain offenses, it is likely that counties and municipalities will incur additional jail costs to sanction those offenders who may not have otherwise been sentenced to jail or sentenced to a shorter stay. The average cost of a day in jail is approximately $60 per day, or $21,900 per year. Third, counties may realize some savings in sanctioning costs, as certain offenders rather than being punished locally will be sentenced to prison, where they become a cost for the state.

Detailed Fiscal Analysis

The bill defines "sweepstakes terminal device," makes such a device subject to Ohio's Gambling Law, and changes the penalty for gambling offenses. The bill also clarifies that slot machines and skill-based amusement devices are also subject to the Gambling Law (both devices are addressed under Ohio Revised Code Chapter 3772., Casino Gaming).

Criminal prohibitions

With regard to prohibited conduct, the bill: (1) enhances the existing penalty for the offense of gambling, and (2) creates the offense of failing to file a sweepstakes terminal device monthly report, a violation of which is a misdemeanor of the first degree. The table below compares the penalties for violating the bill's prohibited conduct, including applicable sentences and fines, to those under current law, with any differences between the two noted in "The Bill" column as bold italicized text.

Sentences and Fines for Bill's Prohibited Conduct		
Prohibited Conduct	**Sentences and Fines**	
	Current Law	**The Bill**
Gambling (first offense)	• First degree misdemeanor • Fine of up to $1,000 • Not more than 180-day jail stay	• ***Fifth degree felony*** • ***Fine of up to $2,500*** • ***6, 7, 8, 9, 10, 11, or 12-month prison term****
Gambling (subsequent offense)	• Fifth degree felony • Fine of up to $2,500 • 6, 7, 8, 9, 10, 11, or 12-month prison term	• ***4th degree felony*** • ***Fine of up to $5,000*** • ***6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18-month prison term****
Failing to file sweepstakes terminal device monthly report	• No provision	• ***First degree misdemeanor*** • ***Fine of up to $1,000*** • ***Not more than 180-day jail stay***

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

Local fiscal effects

County and municipal criminal justice systems generally

The bill's penalty provisions may only create a few additional misdemeanor cases for county and municipal criminal justice systems to process. More notably, it will elevate what would have been a misdemeanor gambling case under current law to a felony. The general local fiscal effects can be described as follows:

- For municipalities annually, a potential expenditure decrease and a potential revenue loss (court costs and fines), as certain gambling cases elevate from misdemeanors to felonies; and
- For counties annually, a potential expenditure increase and a potential revenue gain (court costs and fines), due to the imposition of more serious sanctions.

For those cases that are elevated from a misdemeanor to a felony, the bill will effectively shift criminal cases that would have been handled by municipal courts and county courts to courts of common pleas where they will be handled as felonies and offenders could be subjected to more serious sanctions. As a result, municipalities may: (1) shed some of their criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders who commit these offenses and (2) lose related revenues in the form of court costs and fines. Conversely, counties could: (1) experience an increase in their criminal justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well and (2) gain revenues in the form of court costs and fines.

Another possible manner in which case-processing dynamics may change is that their resolution may take more time and effort, as the offender tries to avoid the imposition of the penalty enhancement. Whether the bargaining process between the prosecutor, defense attorney, and court will become more or less problematic, however, is uncertain.

County and municipal sanctioning costs

The bill will have a mix of effects on county and municipal sanctioning costs. First, as certain cases will be elevated into the felony jurisdiction of counties, county costs will likely rise to sanction offenders and presumably there is some savings in municipal sanctioning costs. Second, counties may incur additional jail costs to sanction those offenders who may not have otherwise been sentenced to jail or sentenced for a shorter stay. The average cost of a day in jail is approximately $60 per day, or $21,900 per year. Third, counties may realize some savings in sanctioning costs, as certain offenders rather than being punished locally will be sentenced to prison, where they become a cost for the state.

State fiscal effects

Office of the Attorney General

Expenditures. As a result of making a "sweepstakes terminal device" subject to Ohio's Gambling Law, it is possible that the Office of the Attorney General may experience an increase in the number of investigations of illegal gambling activities involving such devices (the Attorney General may act as the lead investigative agency or assist local law enforcement). It is unknown how many investigations could be initiated annually or if existing staffing levels would be sufficient. The Attorney General will also incur costs to register any person desiring to conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal facility and issue an annual certificate of registration.

Revenues. The bill requires the Attorney General to adopt rules setting forth the filing fees associated with issuing an annual certificate of registration. The amount of filing fee revenue that might be generated annually is uncertain. Presumably, this revenue will be credited to the General Revenue Fund (GRF) as the bill does not designate it to be credited otherwise.

Incarceration costs

The bill's felony penalty enhancement could increase the Department of Rehabilitation and Correction's annual GRF-funded incarceration costs as a result of two factors. First, the court could impose a prison term on an offender who in the past would have been subjected to community punishment. Second, offenders that would already be sentenced to prison under current law and practice may be subjected to longer terms. The potential magnitude of that increase annually is uncertain, as the number of felons that would be affected in either manner is uncertain and their associated lengths of stay in prison are unknown. The average annual cost for the Department of Rehabilitation and Correction to incarcerate an offender in an Ohio prison is currently around $24,870, with the marginal cost of adding an offender estimated at $3,600.

Court cost revenues

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.

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.

- Relative to violations of the offense of gambling, the substitute bill elevates, with one exception, all violations of the offense of gambling to a felony. This will move cases from the jurisdiction of municipal and county courts to courts of common pleas, potentially decrease municipal criminal justice system revenues and expenditures, increase county criminal justice system revenues and expenditures, and potentially increase the number of offenders sentenced to prison or sentenced to prison for a longer stay. The penalty provision in the As Introduced version of the bill was more narrowly focused on criminalizing operating a scheme of chance as a violation of the offense of gambling. The associated potential state and local fiscal effects would have been considerably less pronounced than those associated with the substitute bill.
- The substitute bill is likely to generate annual filing fees to be collected by the Attorney General. The As Introduced version of the bill contained no such revenue generating mechanism.
- The substitute bill removes language that required the Ohio Lottery Commission to adopt, as necessary, rules describing the types of "schemes of chance" that are prohibited under the Gambling Law. There would have been little or no discernible ongoing costs for the Commission to perform this duty.

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