

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1008 (Third Edition)

SHORT TITLE: Ban Video Poker /All But Reservations

SPONSOR(S): Senator Albertson

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
REVENUES					
General Fund					
Local Governments					
EXPENDITURES					
ALE Division /					
NC Sheriff's Association					
Correction					
Judicial	\$2,200	\$3,900	\$4,100	\$4,300	\$4,500
POSITIONS:					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: N.C. Department of Revenue, Local Governments, Department of Correction, and Judicial Branch					
EFFECTIVE DATE: G.S. 105-256(d)(1) is repealed, but that repeal does not affect reports for activities prior to December 1, 2002. The act becomes effective December 1, 2002, and applies to offenses committed on or after that date but also applies to compacts and amendments, thereto executed before that date, but if this act is held by a court of competent jurisdiction to prohibit possession or operation of video gaming machines by a federally recognized Indian tribe because that activity is not allowed elsewhere, this act is void.					

BILL SUMMARY: The proposed legislation prohibits video poker machines and devices as defined by the statute from operating in the state. First violations would be punishable as Class 1 misdemeanors, second violations as Class I felonies, and subsequent violations as Class H felonies. An exemption is granted for assemblers, repairers, manufacturers, and transporters of video gaming machines who assemble, repair, manufacture, and transport them for sale in another state as long as they are not played in this state. The same exemption is granted for machines destined for a federally recognized Indian tribe if the machines may be lawfully used under the Indian Gaming Regulatory

Act. The proposed bill does not make any activities of a federally recognized Indian tribe unlawful or against public policy, as long as all forms of Class III gaming, without exception, are conducted in accordance with an approved Class III Tribal State Gaming Compact.

BACKGROUND: Based on legislation passed by the General Assembly in 2000, a video gaming machine is lawful in North Carolina if the machine was listed with the county tax assessor by January 31, 2000, for ad valorem property taxes. Additionally, to be lawful in North Carolina, the video gaming machine must also have been in operation in North Carolina on or before June 30, 2000. It must also be a coin-operated machine that uses skill or dexterity to solve problems; limit to eight the number of accumulated credits that may be played at one time; and it may award prizes or merchandise as long as the value does not exceed ten dollars (\$10).

ASSUMPTIONS AND METHODOLOGY:

General Fund

The state's General Fund will not lose any sales tax revenues due to the proposed legislation. The gross receipts from video gaming machines are not subject to a sales or amusement tax.

Individuals and businesses should report earnings from video gaming machines on their annual income tax returns. Fiscal Research was unable to determine how to separate the video gaming proceeds portion of individual and corporate income from other forms of income. Therefore, no estimate can be made on the amount of state income tax that will be lost due to this bill.

Local Governments

The proposed legislation will result in a slight loss of local government property tax revenues. The average cost for a new machine is estimated between \$3,000 and \$5,000; however, until a July 8, 2002, court decision, no new machines were allowed in North Carolina. Thus, the value of the majority of the 10,094 video gaming machines in the state is estimated to be lower. The N.C. Department of Revenue Property Tax Division estimates that each machine would generate no more than \$10 in property taxes. It is not possible to break down the property tax revenue from video poker machines as compared to any other type of machinery (i.e. farm machinery.) Using this estimate, the total loss of property tax across the state would be approximately \$100,000. Counties with higher numbers of video gaming machines would see more of a loss than counties with fewer or no video gaming machines. For example, Mecklenburg County reports 787 machines, while at least four counties report zero machines.

Some cities and counties require privilege licenses for video gaming machines in their area. Fiscal Research was not able to determine a total number of local governments in the state requiring privilege licenses. However, it is estimated to be low.

N.C. Sheriffs' Association / Alcohol Law Enforcement Division

There will also be expenditures associated with this bill. The Alcohol and Law Enforcement Division and the N.C. Sheriffs' Association will be required to enforce the proposed ban. It cannot be estimated how many violations will occur if a ban on video gaming machines was in place, thus no estimate is currently available on potential expenditures. At the same time, the current video gaming machine registration and enforcement process would no longer be necessary. The N.C. Sheriffs' Association conducted a survey and analyzed the results to estimate the costs currently associated with video gaming registration and enforcement of the current law. It was projected that the average

cost per machine to the Association was at least \$433.20, for a total of \$4.3 million (\$433.20 x 10,094 machines) statewide.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The AOC expects SB 1008 to have some impact on the courts. The AOC expects to see some new charges for violations of G.S. 14-306.1A, for Class 1 misdemeanors (first offense), Class I felonies (second offense), and Class H felonies (third or subsequent offense). However, the bill also repeals the language in G.S. 14-306.1 that would make it a Class G felony to operate five or more machines and an infraction for anyone under the age of 18 to play one of these machines. Both of these offenses would now be punishable as Class 1, Class I, or Class H offenses. Data are not available on the number of existing offenses that would fall under this portion of the bill.

In 2000, prior to legislation that became effective on June 30, 2000, the AOC estimated that there were 40,000 video game machines statewide. In calendar year 2001, 76 defendants were charged with offenses under G.S. 14-306.1. The N.C. Sheriff's Association currently provides information on its website, indicating that 10,094 video gaming machines statewide (at 4,335 locations) are registered with county sheriffs. Although the AOC expects that most citizens will comply with the law, it estimates a similar proportion (and breakdown) of new defendants charged under the bill as resulted under the 2000 legislation. Therefore, the AOC estimates that 17 defendants may be charged under the bill: 14 defendants may be charged with Class 1 misdemeanors and three defendants with Class I or Class H felonies.

The AOC estimates an additional eight pleas and six dismissals for Class 1 misdemeanors, and one jury trial, one plea, and one dismissal for the Class I and H felonies. The additional workload for the courts involved in these new cases has an estimated dollar cost of approximately \$2,200 in FY 2002-03 and \$3,900 in FY 2003-04, based on data on average cost per proceeding at different penalty levels. An annual inflation rate of five percent (5%) is used to estimate costs for the next three years, as shown in the box on the front page. Estimates do not include indigent defense costs.

Correction

To project the impact of a bill on the prison population, the Sentencing Commission uses data based on offense codes from the Administrative Office of the Courts (AOC).¹ This bill would repeal G.S. 14-306.1 and add G.S. 14-306.1A. The punishment provisions in G.S. 14-309 that apply to G.S. 14-306.1 would also apply to the new section: Class 1 misdemeanor for the first offense, Class I felony for the second offense, and Class H felony for subsequent offenses. In FY 2000-01, there were no felony convictions and 10 misdemeanor convictions under G.S. 14-306.1. Because the new

¹ The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on December 2001 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

section would make it illegal to operate any video gaming machine, while G.S. 306.1 allowed some video gaming operations, the Sentencing Commission cannot predict how many additional convictions might occur under the proposed legislation.

First Offense. On average, for every seven convictions of a Class 1 misdemeanor, one offender receives an active sentence averaging 40 days to be served in a local jail. For 30-90 day sentences in local jails, the Department of Correction reimburses the county \$18/day. If sentencing practice for this offense were similar to that of other Class 1 misdemeanors, for every seven convictions on first offense, the cost to the State would average \$720 (=40*18). In addition, 83 percent of Class 1 misdemeanor convictions resulted in community sentences and two percent resulted in intermediate sentences. Average daily cost for community punishment is \$1.87, and the average daily cost for intermediate punishment is \$12.69.

Second and Subsequent Offenses. The Sentencing Commission cannot project the number of convictions for second or subsequent offenses. However, if there were five convictions for a second offense (Class I felony) per year, this bill would result in the need for one additional prison bed in the first year and two additional beds in the second year due to active sentences and post-release sentencing revocations. If there were three convictions for a third or subsequent offense (Class H felony) per year, this bill would result in the need for one additional prison bed in the first year and two additional beds in the second year due to active sentences and post-release sentencing revocations.

SOURCES OF DATA: N.C. Department of Revenue – Property Tax and Tax Research Divisions

TECHNICAL CONSIDERATIONS: Current law (G.S. 14-306.2 and 14-306.3) makes the operation or possession of a slot machine where the user may become entitled to receive any money, credit, allowance, or anything of value unlawful; each violation is punishable as a Class 2 misdemeanor.

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