

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 1763 (First Edition)

SHORT TITLE: Increase Regulation of Amusement Devices

SPONSOR(S): Representatives Culpepper, Owens, G. Allen, and Harrell

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>
REVENUES:					
ALE	\$1,293,750	\$1,725,000	\$1,725,000	\$1,725,000	\$1,725,000
EXPENDITURES:					
AOC	Unable to determine				
ALE	\$2,195,042	\$1,217,901	\$1,217,901	\$1,217,901	\$1,217,901
Revenue	\$91,911	\$7,911	\$7,911	\$7,911	\$7,911
Correction	Unable to determine				
POSITIONS:					
ALE	22	22	22	22	22
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Correction; Crime Control and Public Safety; Revenue; Administrative Office of the Courts					
EFFECTIVE DATE: October 1, 2004					

BILL SUMMARY: Amends GS 14-306.1 to permit warehousing of video gaming machines in North Carolina, to preempt any local government from adopting more restrictive ordinances regulating video gaming devices, to transfer the responsibility for handling registration of the devices from sheriffs to the Alcohol Law Enforcement, to specify what must be included in the registration, to require all machines to have serial numbers permanently affixed to the machine, to prohibit the use of words jackpot, casino, or Las Vegas on the device or in sound systems in the devices, and to provide that ban on ownership or possession of devices upon conviction under GS 14-309 applies to convictions under subsection (b) of that statute. Amends GS 14-309 to make it a Class G felony to own or possess device that was not eligible for registration on Oct. 1, 2000. Amends GS 14-306 to require specified machines to be equipped with hand count feature that permits reconciliation of numbers of plays and number of paper coupons issued. Adds new GS 105-37.3 to impose privilege tax of \$125 per quarter, beginning with third quarter of 2004; funds to be used by ALE to support enforcement and registration program. Effective Oct. 1, 2004.

Source: Bill Digest H.B. 1763 (05/31/2004)

ASSUMPTIONS AND METHODOLOGY:

Current law allows only those video poker machines that were lawfully in operation in the state on or before June 30, 2000. Owners of these machines must report on a quarterly basis to the Department of Revenue (DOR) the “gross receipts from video poker machines, itemized by each machine, the total number of machines at each location, and the total value of prizes and merchandise awarded to players of each machine at a location.” Section 5 of the bill establishes a quarterly privilege tax on video poker machines of \$125 per location. As of December 31, 2002, (the most recent date for which DOR has usable data), there were 9,025 video poker machines in service at 4,063 locations. Excluded from this total are about 1,000 machines that were identified as “out of service” for any reason. To estimate the impact of the proposed bill, DOR staff assumed that operators would remove from service those machines in locations that reported gross receipts that were less than \$125 per quarter. As a result, DOR staff estimates that the owners of 7,842 video poker machines operating at 3,450 locations would pay the quarterly privilege tax proposed under HB 1763. In FY 2004-05, a projected \$1,293,750 in privilege taxes would be collected for the period October 1, 2004 through June 30, 2005. In FY 2005, \$1,725,000 would be collected for the full year.

	Number of Machines	Number of Locations
Total Machines in Service	9,025	4,063
Machines reported as having some gross receipts	8,228	3,728
Machines reported as having more than \$125 gross receipts per quarter	7,842	3,450

Administrative Office of the Courts (AOC)

The Administrative Office of the Courts provided the following section-by-section analysis of proposed bill’s impact on the Judicial Branch:

Section 1: hand count feature on video gaming machine: Under current GS 14-306(c), a video gaming machine that limits to eight the number of accumulated credits or replays that may be played at one time must have affixed to it a sticker informing the player that it is unlawful to pay more than that which is allowed by law. Under current GS 14-309(a), a first offense is punishable as a Class 1 misdemeanor, a second offense is a class I felony, and a third or subsequent offense is a Class H felony. This bill expands current GS 14-306(c) by requiring that the machine also be equipped with a hand count feature that permits the reconciliation of the number of plays with the number of paper coupons issued. The AOC currently does not have an offense code for GS 14-306(c), which is an indicator that very few charges occur. There is no available data from which to estimate the number of new charges that would arise as a result of this provision.

Section 2: New GS 14-306.1(g1) requires each video gaming machine to have a serial number permanently affixed to it. It is unlawful to display the words “jackpot,” “casino,” or “Las Vegas” on the machine or to emit those words in an audible fashion. Under current GS 14-306.1(i), the owner of a video gaming machine must, by October 1, 2000, register the machine with the Sheriff of the county in which the machine is located. This bill requires an owner who registered with the

Sheriff to register with Alcohol Law Enforcement by October 1, 2004. The AOC currently does not have an offense code for current GS 14-306.1(i), which is an indicator that relatively few charges occur. There is no available data from which to estimate the number of new charges that would arise from this provision.

Under current GS 14-306.1(m), it is unlawful to warehouse any video gaming machine except in conjunction with the assembly, manufacture, and transportation of such machine. This bill makes it lawful to warehouse any number of video machines that meet the requirements of GS 14-306.1(a) and that are not in operation. Under current GS 14-306.1(p), a defendant who has one conviction under GS 14-309(a) may not possess any video gaming machine for a period of one year, or a period of 2 years if he/she has 2 convictions. A defendant with 3 or more convictions may not possess any video gaming machine. This bill expands current GS 14-306.1(p), providing that a conviction under GS 14-309(a) or (b) disqualifies a defendant from owning or possessing any video gaming machine as set out above. This bill could lead to more opportunities for defendants to violate GS 14-306.1(p). Per current GS 14-309(a), one who violates any of the offenses above is guilty of a Class 1 misdemeanor for the first offense, a Class I felony for a second offense, and a Class H felony for a third or subsequent offense. There is no available data from which to estimate the number of additional charges that would arise from these amendments. Depending on the number of such charges, there could be a significant impact on the court system, increasing the workload of superior court and district court judges, district attorneys, and clerks. There would also be an increase in expenses for jury fees and indigent defense.

Section 3: seizure of illegal gaming items: Under current GS 14-298, law enforcement officers are authorized, based on information made to them on oath, to destroy any illegal gaming tables, punchboards, slot machines, and video game machines. Under the amended GS 14-298, a law enforcement officer, upon probable cause to believe that the item is illegal, can seize the item but must obtain a disposition order from a district or superior court judge before the item can be destroyed or returned to its lawful owner. AOC has no data from which to estimate the number of proceedings that would occur as a result of this amendment. Depending on the number and complexity of such proceedings, there could be a substantial impact on the court system. AOC would expect an increase in the workload of superior court and district court judges, district attorneys, and clerks.

Section 4: increase criminal penalty: Under current GS 14-306.1(a), it is unlawful to operate, allow to be operated, place into operation, or keep in that person's possession for the purpose of operation any video gaming machine unless it was lawfully in operation on or before June 30, 2000 and listed by January 31, 2000 for ad valorem taxation, or the machine does not issue any receipt, token, or other form of record that can be redeemed for cash, prizes, or free replays. Per current GS 14-309(a), a first offense is punishable as a Class 1 misdemeanor, a second offense is a Class I felony, and a third or subsequent offense is a Class H felony. This bill increases the penalty for the offenses listed in current GS 14-306.1(a), making it a Class G felony to knowingly own or possess a machine that was not eligible for registration on October 1, 2000 as set out above. AOC data for calendar 2003 indicate no defendants charged and 1 defendant convicted with a Class 1 misdemeanor under current GS 14-306.1(a). There is a difference of \$4,427 in cost between a Class G felony trial and a Class 1 misdemeanor trial, and a difference of \$96 in cost between a Class G felony plea and a Class 1 misdemeanor plea.

Section 5: new privilege tax: This bill creates new GS 105-37.3 and imposes a privilege tax of \$125 per calendar quarter for each location at which a video gaming machine is operated. Under current GS 105-236(4), a defendant who fails to pay a tax when it is due, without intent to evade the tax, is assessed a penalty equal to 10% of the tax. A defendant who willfully attempts to evade a tax or its payment is guilty of a Class H felony under current GS 105-236(7), aside from being assessed a penalty equal to 50% of the total deficiency under current GS 105-236(6). There are approximately 4,000 locations statewide at which video gaming machines are operated. This provision can be expected to result in increased enforcement and court actions appealing enforcement actions. AOC has no data from which to estimate the number of such matters or the impact on the courts. Depending on the number and complexity of such proceedings, the court impact could be significant.

Summary: AOC currently has no data from which to estimate the impact of this bill. However increased workload of the district court judges, superior court judges, district attorneys, clerks, and court reporters would be expected. There would also be an increase in expenditures for jury fees and indigent defense. AOC staff indicated that the court system is under funded, overstretched, and in need of significant additional resources to manage the demands of the existing workload. Therefore any impact on the courts is substantial under current circumstances and the court system cannot absorb any additional workload without additional resources

Department of Correction

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. If, for example, there were two Class G convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year. The daily operating cost per inmate ranges from \$46.23 for minimum security to \$74.56 for close security, with an average cost for all custody levels of \$57.92. Those offenders not given active sentences (58%) would be supervised by the Division of Community Corrections at a cost of \$8.40 to \$10.06 per offender per day.

Every Class 1 misdemeanor conviction has the potential to impact the Department of Correction through probation supervision, payments to counties for jailed offenders, or, for offenders with a prior record, a short prison term. Class 1 misdemeanants may be sentenced to community, intermediate, or active punishments. Depending on Prior Record Level and sanction, the potential impact on DOC ranges from \$0 to \$5,520 per offender. Based on prior-year data, the most likely punishment is supervised or unsupervised probation. Supervised probation, without community service, would cost approximately \$639 per offender per year. About 17 percent of Class 1 misdemeanants received active sentences. The majority of these sentences are less than 90 days, which means that the offenders serve their time in a county jail. The Department of Correction reimburses the county at a rate of \$18 per offender per day for sentences between 30 and 90 days. Sentences of more than 90 days are served in prison at a cost of \$46 per offender per day. For offenders sentenced to unsupervised probation, ordered only to pay fines or restitution, or sentenced to active time of less than 30 days, there is no impact on the Department of Correction.

Department of Crime Control and Public Safety, Alcohol Law Enforcement Division

Under the proposed bill, all video pokers machines shall be registered with the Alcohol Law Enforcement (ALE) Division in the Department of Crime Control and Public Safety no later than October 1, 2004. The quarterly privilege taxes collected by DOR, \$125 per location, are to be credited to ALE's budget to cover the costs of registration, monitoring, and other enforcement activities. The bill requires ALE to develop a registration process using either a standardized registration form or an on-line process. ALE would have primary responsibility for enforcement of the registration requirements, including on site inspection of video poker machines. ALE staff indicated that the following staff and other resources would be needed to implement the proposed bill in the first year:

20 New Agent Positions	\$ 1,809,060
BLET Training	\$ 134,370
Reclassification of existing agents to supervisory positions	\$ 153,287
Administrative Assistant II	\$ 35,878
Office Assistant IV	\$ 28,056
Computer equipment, desks, etc for support staff	\$ 9,391
Specialized Training	\$ 25,000
Total	\$2,195,042

Of this amount, \$977,141 is non-recurring cost associated with training, vehicles, equipment, etc. The above assumes that ALE is not responsible for collecting and accounting for the taxes required under Section 5 of the bill. If ALE is required to collect the tax, two additional positions would be needed, one Office Assistant IV and an Accounting Technician. The additional cost associated with these two positions is \$65,505.

Department of Revenue

Under current law, owners of video poker machines submit quarterly reports to the Department of Revenue. As these are not tax documents, DOR stores the report data in an Access database rather than the Integrated Tax Administration System (ITAS). If DOR is tasked with collecting the tax, the data will need to be submitted in the ITAS format so that the forms can be scanned rather than hand-keyed and so that if a business fails to pay the tax, the amount due can be charged against refunds of other taxes. There would need to be a fair amount of programming done to set up a new database in ITAS. DOR projects that it would cost about \$92,000 in 2004-05 in order to administer the tax. In subsequent years, DOR's annual recurring cost for this bill would be around \$7,900. Their cost analysis assumes the following:

- The tax will be due for the 4th Quarter of 2004, rather than the 3rd Quarter, due to the inability to have a system in place to collect it before that time.
- There will be 3,000 locations that pay the tax each quarter, for a total of 12,000 forms processed each year.

- Tax forms will be processed through optical scanning and the data stored in ITAS. ITAS must be reprogrammed for this purpose. DOR estimates that it will require 1,200 hours of programming time at \$70 per hour.
- Tax forms will be mailed once a year to businesses that ALE identifies as locations for machines. The postage cost for each form is \$0.517.
- The cost of processing each additional tax form is \$2.12.

Based on these assumptions, DOR's estimated costs in FY 2004-05 are as follows:

Reprogramming ITAS	\$84,000
Postage	\$1,551
Processing tax forms	\$6,360

SOURCES OF DATA: Department of Revenue; Department of Crime Control and Public Safety, Alcohol Law Enforcement Division; Administrative Office of the Courts; NC Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS:

1. The bill does not specify which agency, Revenue or Alcohol Law Enforcement, shall collect the privilege tax set forth in Section 5.
2. Section 5 (c) specifies that the quarterly tax shall be paid beginning with the third calendar quarter of 2004. The third calendar period begins on July 1, 2004. However, the effective date of the bill is October 1, 2004. Revenue staff noted that that it is unconstitutional to levy a tax for a period prior to the effective date of the tax.
3. If the Department of Revenue is responsible for collecting the privilege tax, about six-months would be needed to reprogram the ITAS computer system. The Department could not start collecting the privilege tax before December 2004.

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