



Ohio Legislative Service Commission

Jean J. Botomogno, Phil Cummins, and other LSC staff

Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 263 of the 128th G.A. **Date:** May 28, 2010
Status: As Passed by the Senate **Sponsor:** Sen. Faber

Local Impact Statement Procedure Required: No — Offsetting revenues

Contents: Creates the Ohio Casino Control Commission and establishes casino gaming statutes under Ohio Constitution, Article XV, Section 6(C)

State Fiscal Highlights

STATE FUND	FY 2011	FY 2012	FUTURE YEARS
Casino Tax Revenue Fund (new fund)			
Revenues	- 0 -	- 0 -	Possible gain in the hundreds of millions of dollars
Expenditures	- 0 -	- 0 -	Receipts to be transferred to other funds created by the bill for distribution according to Ohio Constitution, Article XV, Section 6(C)
Casino Control Commission Fund (new fund)			
Revenues	Potential gain from casino operator fee	Potential gain from casino operator fee	Potential gain from share of casino tax receipts
Expenditures	Potential increase	Potential increase	Potential increase
General Revenue Fund			
Revenues	Potential income tax loss from the deduction of certain gambling losses, likely in the tens of millions	Potential income tax loss from the deduction of certain gambling losses, likely in the tens of millions	Potential income tax loss from the deduction of certain gambling losses, likely in the tens of millions
Expenditures	Potential incarceration cost increase, annual magnitude uncertain		
General Reimbursement Fund (Fund 1060 - Attorney General)			
Revenues	Potential gain in background check fee revenue		
Expenditures	Potential increase in workload expenditures and costs incurred for FBI checks, likely commensurate with revenues gained		
Charitable Foundations Fund (Fund 4180 - Attorney General)			
Revenues	Potential gain in license fees		
Expenditures	Potential increase in Charitable Gambling Law administrative and enforcement costs, not likely to exceed minimal		

Note: The state fiscal year is July 1 through June 30. For example, FY 2011 is July 1, 2010 – June 30, 2011

- **Casino Control Commission.** The bill creates the seven-member Ohio Casino Control Commission (OCCC), which will incur expenses estimated at \$2.3 million prior to the opening of the casinos and \$11.2 million after they open.
- **License fee.** In implementing Ohio Constitution, Article XV, Section 6(C), the bill specifies the upfront license fee to obtain a license as a casino operator of \$50 million for each of four casinos.
- **Application fee.** The fee for an application for a casino operator, management company, or holding company license is \$1 million per application, deposited into the Casino Control Commission Fund.
- **Tax on casino revenue.** A 33% tax is levied on gross casino revenue, and deposited into the Casino Tax Revenue Fund, created by the bill. The Department of Taxation estimated this tax might raise about \$643 million annually. In the table, LSC assumes this tax will be received and distributed to various other funds created by the bill in years after FY 2012.
- **Transfers from Casino Tax Revenue Fund.** In implementing Ohio Constitution, Article XV, Section 6(C), the bill establishes the following new funds in the state treasury, and requires the Director of Budget and Management to transfer the percentages shown of the balance in the Casino Tax Revenue Fund to the receiving fund: (1) Gross Casino Revenue County Fund (51%), (2) Gross Casino Revenue County Student Fund (34%), (3) Gross Casino Revenue Host City Fund (5%), (4) Ohio State Racing Commission Fund (3%), (5) Ohio Law Enforcement Training Fund (2%), (6) Ohio Problem Gambling and Substance Abuse Fund (2%), and Casino Control Commission Fund (3%).
- **New income tax deduction for gambling losses.** The bill creates a new income tax deduction for losses from wagering transactions allowed as itemized deductions on federal tax returns. The revenue loss from this provision may be in the tens of millions annually. Under permanent law, 94.1% of the loss would be incurred by the GRF.
- **Background checks.** The Office of the Attorney General (Bureau of Criminal Identification and Investigation, or BCII) will be required to perform background checks on Commission members, staff of the Commission, and certain employees of the casinos and related industries. The cost of the background check is \$22 for a statewide check and an additional \$24 for the FBI check, of which \$22 is forwarded to the FBI. All fees are deposited to the credit of Fund 1060, General Reimbursement.
- **Bingo.** Changes made by the various bingo-related provisions of the bill are not expected to noticeably increase the administrative and enforcement workload and related annual operating costs of the Attorney General's Charitable Law Section. Likewise, licensing revenues will also largely remain unaffected, although there may be a negligible increase. Thus, the potential effect on the Attorney General's

expenditures and revenues, in particular those associated with Fund 4180, appears unlikely to exceed minimal.

- **Disclosure statement.** Members of OCCC and specified employees must file disclosure statements with the Ethics Commission.
- **Court cost revenues.** With each conviction for the bill's prohibitions, the state may gain locally collected state court cost revenue that is deposited in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The magnitude of any resultant revenue gain is likely to be minimal at most annually.
- **GRF incarceration costs.** The available data does not permit a reasonably accurate estimate of the number of persons that will be convicted of one of the bill's prohibitions and subsequently sentenced to prison. The magnitude of the potential resulting increase in the Department of Rehabilitation and Correction's annual GRF-funded incarceration costs is uncertain.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010	FY 2011	FUTURE YEARS
Counties, School Districts, and Cities			
Revenues	- 0 -	- 0 -	Potential gain in the hundreds of millions
Expenditures	- 0 -	- 0 -	- 0 -
Counties, municipalities, townships, and public libraries			
Revenues	- 0 -	Potential income tax loss from the deduction of certain gambling losses, likely in the millions	Potential income tax loss from the deduction of certain gambling losses, likely in the millions
Expenditures	- 0 -	- 0 -	- 0 -
Counties and Municipalities (criminal justice systems)			
Revenues	Potential, likely minimal, annual gain in court cost and fine revenues		
Expenditures	Likely increase to process and sanction violators		

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Tax on casino revenue.** Counties, school districts, and eight cities are to receive 90% of the proceeds from the tax on casino revenue. Specifically, they receive transfers from the Gross Casino Revenue County Fund, the Gross Casino Revenue County Student Fund, and the Gross Casino Revenue Host City Fund. LSC assumes these cash flows will not start until after FY 2012.
- **New income tax deduction for gambling losses.** Under permanent law, GRF tax receipts are distributed to the Local Government Fund (3.68%) and the Public Library Fund (2.22%). Thus, the personal income tax revenue loss would be shared by these two local government funds.

- **Assistance to Attorney General.** The bill could generate indirect effects in that local criminal justice-related agencies may be requested to assist the Attorney General in investigating casino-related prohibited conduct. However, at this time it is difficult to predict with any certainty how many investigations could be opened annually and to what extent local law enforcement agencies and prosecutors would be involved in those cases.
- **Criminal case processing costs and revenues.** As the likely number of violations of the bill's prohibitions is uncertain, it is unclear as to whether the resulting increase in an affected county or municipal criminal justice system's expenditures will exceed minimal annually. County and municipal criminal justice systems, specifically those that have a casino facility within their jurisdiction, may realize a no more than minimal annual increase in court cost and fine revenue collections as a result of persons being convicted of violating the bill's prohibitions and requirements.

Detailed Fiscal Analysis

The bill provides for Ohio gaming statutes and implements Article XV, Section 6(C), of the Ohio Constitution which authorizes casino gaming in four locations in the state. This fiscal note includes provisions that may have a substantial fiscal effect. Among the major provisions are establishment of the Ohio Casino Control Commission and the permanent Joint Committee on Gaming and Wagering, specification in statute of taxes and fees, and various other programs included in the bill.

The Ohio Casino Control Commission

The bill creates the Ohio Casino Control Commission (OCCC). The Commission is composed of seven members appointed by the Governor. Members serve four-year terms and may be reappointed for up to three terms, and will be paid \$60,000 per year. Additionally, they will be reimbursed for actual and necessary expenses incurred in the performance of their duties. OCCC is authorized to license, regulate, investigate, and penalize casino operators. The bill requires OCCC to submit an annual report to the Governor, the Senate President, the Speaker of the House of Representatives, and the Joint Committee on Gaming and Wagering.

OCCC is to appoint an executive director who hires the staff and will receive an annual salary in accordance with pay range 48 of section 124.152 of the Revised Code, i.e., in a pay range of \$66,851 to \$146,286. OCCC will pay expenses related to the criminal background checks of its staff, the casino operators, gaming related vendors, and casino employees. OCCC will be reimbursed for the costs of the background checks, except those related to its own staff. The Department of Taxation estimated OCCC staffing cost at \$2.3 million in the start-up year prior to the opening of the four casinos, and \$11.2 million once the four casinos have been opened. Details regarding the operation of OCCC are available in the bill analysis at <http://www.legislature.state.oh.us>. Operations of OCCC will be paid from the Casino Control Commission Fund, established by the bill.

Legislative permanent Joint Committee on Gaming and Wagering

The bill creates a six-member legislative permanent Joint Committee on Gaming and Wagering to review laws and rules governing the administration and to study proposed changes to casino gaming in Ohio. The Senate President and the Speaker of the House of Representatives will each appoint three members to this committee. Any study or committee expenses are to be paid for from OCCC funds or other appropriation by law. Members shall receive no compensation, but will be reimbursed for actual and necessary expenses incurred in the performance of their duties. The bill requires the Joint Committee on Gaming and Wagering to make an annual report to the Governor and the General Assembly. As of this writing, LSC is unable to estimate the costs associated with the Joint Committee on Gaming and Wagering.

Fees and permits

The bill establishes an upfront payment of \$50 million per casino facility and an operator fee of \$1 million per casino. Other fees for operators, management and holding companies, employees, and vendors will be set by OCCC by rule, subject to the approval of the legislative Joint Committee on Gaming and Wagering.

Table 1: Summary of Fee Revenues			
	Per Facility	Number of Facilities	Total Fees
Casino Operator Upfront Fees	\$50,000,000	4	\$200,000,000
Casino Operator Application Fees	\$1,000,000	4	\$4,000,000
D5-n Permit Fee (casino operator)	\$25,000	4	\$100,000
D5-o Permit Fee (restaurant)	\$2,344	4	\$9,376
Total			\$204,109,376

As provided in Article XV, Section 6(C), of the Ohio Constitution, the upfront license fee shall be used "to fund state economic development programs which support regional job training efforts to equip Ohio's workforce with additional skills to grow the economy." The bill does not specify where the upfront payment of \$50 million per casino will be deposited. The operator fee of \$1 million will be deposited into the Casino Control Commission Fund. This fee is shown in the table as a one-time fee for each casino location. New casino operator, management company, and holding company licenses and renewal licenses fees will be set by rule, subject to the approval of the Joint Committee on Gaming and Wagering. The bill specifies that renewal license fees are to be limited to actual expenses of processing the renewal license application. LSC assumes that those fees would be deposited into the Casino Control Commission Fund.

The bill creates four D5-n permits (one for each casino), and an unlimited number of D5-o permits. The fees for the permits are \$25,000 for the D5-n and \$2,344 for the D5-o permits. Thus, fee revenues would be \$100,000 from the D5-n permits and at least \$9,376 from the D5-o permits. The table above assumes one permit per location. D5-n and D5-o permits authorize sales of beer, wine, and liquor at only two fixed counters (serving locations) on the permit premises. A duplicate permit is required for each additional fixed counter. The fee for a duplicate D5-n permit is 20% of the fees payable for D5-n or D5-o permits issued to the same premises while a duplicate D5-o permit carries a \$1,000 fee. In addition, if Sunday sales are desired, the bill requires a D-6 permit to be issued to a holder of a D5-n or D5-o permit, subject to those sales having been approved by local option election. The fee for a D-6 permit is \$500.

Liquor permit fee revenue is deposited to the Undivided Liquor Permit Fund (Fund 7066) and subsequently distributed to the GRF (45%), the Statewide Treatment and Prevention Fund (Fund 4750) used by the Department of Alcohol and Drug

Addiction Services (20%), and the local taxing district where the permits are issued (35%). All permanent liquor permits, in addition to the stated fee, carry a \$100 processing fee that covers the Department of Commerce's expenses in fingerprinting and making background checks for permanent license applications. This fee is deposited into the Liquor Control Fund (Fund 7043).

Licensing procedure

The bill describes procedures for obtaining various licenses for operators, management and holding companies, employees, and vendors, and for suspensions, revocation, and renewal of the licenses. Details of the licensure provisions and other requirements are available in the LSC bill analysis.

New funds in the state treasury

Article XV, Section 6(C), of the Ohio Constitution prescribes both a 33% tax on gross casino revenues¹ and the distribution of receipts from the tax. The bill creates the following new funds that will receive those distributions: the Casino Tax Revenue Fund, the Gross Casino Revenue County Fund, the Gross Casino Revenue County Student Fund, the Gross Casino Revenue Host City Fund, the Ohio State Racing Commission Fund, the Ohio Law Enforcement Training Fund, the Problem Casino Gambling and Addictions Fund, the Casino Control Commission Fund, and the Casino Tax Administration Fund.

The Director of Budget and Management shall credit all moneys collected from the tax on gross casino revenues to the Casino Tax Revenue Fund. From amounts in the Casino Tax Revenue Fund, the Director of Budget and Management shall transfer 51% of the balance to the Gross Casino Revenue County Fund, 34% to the Gross Casino Revenue County Student Fund, 5% to the Gross Casino Revenue Host City Fund, 3% to the Ohio State Racing Commission Fund, 2% to the Ohio Law Enforcement Training Fund, 2% to the Problem Casino Gambling and Addictions Fund, and 3% to the Casino Control Commission Fund. The Department of Taxation has estimated that the casino gross receipts tax may yield about \$643 million a year when all four casinos are built and fully operational. If slot machines are authorized at a later date at Ohio's seven racetracks, potential revenues from the casinos would be lower. Also, increased competition from gaming opportunities outside Ohio, and the business cycle, may reduce the potential yield of the tax. Based on the Department of Taxation estimate and distributions prescribed by the bill, Table 2 below provides potential revenues to the various funds.

¹ The bill also specifies that the gross casino revenue tax is in addition to any other taxes or fees imposed by the Revised Code.

Table 2: Distribution of Potential Casino Tax Receipts		
Fund	Share	Estimated Revenue (in millions)
Gross Casino Revenue County Fund	51%	\$328.2
Gross Casino Revenue County Student Fund	34%	\$218.8
Gross Casino Revenue Host City Fund	5%	\$32.2
Ohio State Racing Commission Fund	3%	\$19.3
Casino Control Commission Fund	3%	\$19.3
Problem Casino Gambling and Addictions Fund	2%	\$12.9
Ohio Law Enforcement Training Fund	2%	\$12.9
Total	100%	\$643.4

Of the money credited to the Ohio Law Enforcement Training Fund, the bill earmarks 85% of the money to the Ohio Peace Officer Training Academy (\$10.9 million) in the Attorney General's Office and 15% to the Division of Criminal Justice Services (\$1.9 million) in the Department of Public Safety. The Casino Tax Administration Fund is to receive 1% of the money credited to the Casino Control Commission Fund (\$0.2 million). The bill requires the Director of Budget and Management to make payments to counties through the Gross Casino Revenue County Fund and the Gross Casino Revenue County Student Fund using annualized data possessed by the Tax Commissioner.

Casino gaming

The bill authorizes up to 5,000 slot machines per casino, and an unlimited number of table games. Any slot machine or table game authorized in Indiana, Michigan, Pennsylvania, and West Virginia may be conducted in Ohio casinos with the approval of OCCC. Subject to the approval of OCCC, casinos are allowed to determine minimum and maximum wagers for gaming, and slot machine payout must be at least 85%. If OCCC authorizes a central operating system for the security, integrity, financial accountability, proper operation, and reporting of casino gaming, casino operators will be responsible for the costs of such central system as it relates to casino facilities.²

New income tax deduction

The bill creates a new deduction for wagering losses under the personal income tax. Taxpayers may deduct to the extent not deducted or excluded in computing their federal adjusted gross income any loss from wagering transactions allowed and taken as an itemized deduction on Schedule A in their federal income tax returns. The deduction will create a revenue loss from the personal income tax. The amount of revenue loss is uncertain. However, according to the Department of Taxation, the

² Such central systems may cost tens of millions of dollars to implement.

annual loss is likely to be in the tens of millions of dollars. Under permanent law, personal income tax receipts are distributed to the General Revenue Fund (GRF, 94.1%), the Local Government Fund (LGF, 3.68%), and the Public Library Fund (PLF, 2.22%).

Bingo and instant bingo

The bill amends existing law relating to charitable gaming. These changes include, but are not limited to:

1. Authorizes a charitable organization to purchase, lease, and use instant bingo dispensers;
2. Changes the definition of veterans and fraternal organizations by removing the requirement that a veterans organization be in continuous existence for at least two years and fraternal organizations be in continuous existence for at least five years;
3. Increases the number of times in a year a veterans and fraternal organization may lease premises to charitable organizations for festivals at which games of chance are conducted;
4. Allows a charitable organization to spend a reasonable amount of its gross profit to pay certain property taxes and assessments.

These provisions of the bill will mainly affect the expenditures and revenues of the Office of the Attorney General. The Office's Charitable Law Section is responsible for licensing: (1) charitable organizations who apply for various bingo-related licenses and (2) manufacturers and distributors of bingo supplies. In addition to its licensing function, the Section is authorized, in cooperation with local law enforcement agencies when necessary and appropriate, to investigate, examine accounts and records, conduct inspections, and take any other necessary and reasonable actions to administer and enforce the Charitable Gaming Law. The Section's operating expenses are financed by moneys appropriated from Fund 4180, which include bingo license fee revenues, with any expenses of the Section in excess of moneys available in Fund 4180 paid from GRF line item 055321, Operating Expenses.

Changes to the various bingo-related provisions of the bill are not expected to noticeably increase the administrative and enforcement workload and related annual operating costs of the Attorney General's Charitable Law Section. Likewise, licensing revenues will also largely remain unaffected, although there may be a negligible increase if an organization's gross annual receipts ultimately increase (which could increase the annual license amount). Thus, the potential effect on the Attorney General's expenditures and revenues, in particular those associated with Fund 4180, appears unlikely to exceed minimal.

State agencies expenditures

Various state agencies will incur expenditures related to the requirements of the bill. No appropriations are made in the bill to finance the costs related to the

requirements included in the gaming statutes. As of this writing, LSC is unable to estimate costs associated with all of these requirements.

Inspector General

The bill requires the Inspector General to conduct random reviews of the processing of contracts associated with OCCC. In addition, the bill allows the Inspector General to investigate any wrongful acts or omissions that have been committed by the Commission and, at the conclusion of an investigation, the Inspector General is required to report its findings to the executive director of the Commission and to the Governor. The bill appropriates no moneys in the Inspector General's budget for the purpose of carrying out the requirements of the bill.

Attorney General

The Office of the Attorney General is charged with civil enforcement of Chapter 3772. (or any rule passed pursuant to that chapter) and may pursue a civil action with a court of common pleas. It is uncertain how many civil actions will be pursued annually, but the Office would likely dedicate some staff to the duty of enforcement of these provisions. The Office of the Attorney General (Bureau of Criminal Identification and Investigation, or BCII) will be required to perform background checks on OCCC members and staff, and certain employees of the casinos and related industries. The cost of the background check is \$22 for a statewide check and an additional \$24 for the FBI check, of which \$22 is forwarded to the FBI. All fees are deposited to the credit of Fund 1060, General Reimbursement.

Ethics Commission

The bill requires all members of OCCC, the executive director, all professional employees, and all technical employees of the Commission who perform an internal audit function to file appropriate disclosure statements to the Ethics Commission.

Department of Rehabilitation and Correction

The bill creates several criminal prohibitions, generally related to various prohibited casino-related conduct (e.g., cheating). Violating any of these prohibitions is a felony of the fifth degree on the first offense, punishable by 6 to 12 months in prison and a fine of no more than \$2,500, and a felony of the fourth degree on each subsequent offense, which is punishable by 6 to 18 months in prison and a fine of no more than \$5,000. The individual could also be barred for life from entering a casino facility.

It is uncertain how many criminal convictions would result annually, or, of this number, how many would be sentenced to prison. Violations will occur, with some persons convicted of a felony offense being sentenced to prison. The magnitude of the potential resulting increase in DRC's annual incarceration costs is uncertain. As of April 2010, the annual average cost associated with housing and providing services to an offender in prison was \$25,334, or \$69.41 per day.

Other agencies

The bill requires OCCC to enter into an agreement with the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) to provide a program of gambling and addiction services. The bill specifies that ODADAS will administer the Problem Casino Gambling and Addictions Fund, and prepare an annual report to OCCC, the Speaker of the House, the Senate President, the Governor, and the Joint Committee on Gaming and Wagering, describing the use of the fund. (Currently, the Department of Alcohol and Drug Addiction Services provides treatment to clients with an alcohol or other drug addiction and co-occurring gambling addiction or pathological gambling addiction with funds received from the Ohio Lottery Commission through an interagency agreement. Expenses are financed with moneys appropriated from Fund 5T90, line item 038616, Problem Gambling Services.)

The Ohio Peace Officer Training Commission (Office of the Attorney General) will create a gaming-related curriculum for gaming agents and will use money from the Ohio Law Enforcement Training Fund to train gaming agents.

The Department of Taxation will use funding provided from the Casino Control Commission Fund to administer the casino tax. The Department of Taxation had previously estimated start-up costs for administering the casino tax at \$400,000, and ongoing operations at \$250,000 per year.

Units of local government

Counties

Funds in the Gross Casino Revenue County Fund, estimated at \$328.2 million per year, are to be distributed among all 88 counties in proportion to their respective populations. Potential distributions may range from \$0.4 million for Vinton County to \$40.3 million for Cuyahoga County. If a county's most populated city had a population greater than 80,000, then 50% of that county's distribution will go to that city. According to the 2000 Census, Columbus, Cleveland, Cincinnati, Toledo, Akron, Dayton, Youngstown, and Canton will receive half of the distributions to their respective counties.

School districts

Funds in the Gross Casino Revenue County Student Fund are to be distributed to all 88 counties in proportion to public school district student populations at the time of such distribution. Those funds are to be distributed among all public school districts located (in whole or in part) within such county in proportion to each school district's respective student population who are residents of such county at the time of distribution to the school districts. Each public school district shall determine how its distributions are appropriated, but all distributions shall be used only to support primary and secondary education.

Municipalities

Combined revenue to the Gross Casino Revenue Host City Fund may be about \$32.2 million per year. Due to varying gaming market conditions, yearly municipal distributions are estimated to range from \$4.1 million in Toledo to \$11.5 million in Cleveland. Cincinnati and Columbus may receive \$7.1 million and 9.4 million, respectively.

Miscellaneous

If any application of any provision of the gaming statutes is held invalid, the bill requires all other provisions of law contained in the gaming statutes and their application to be invalid.