

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House  
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**FISCAL IMPACT STATEMENT**

**LS 7653**

**BILL NUMBER: HB 1884**

**NOTE PREPARED:** Jan 31, 2003

**BILL AMENDED:**

**SUBJECT:** Gaming and Local Public Safety Personnel Pensions.

**FIRST AUTHOR:** Rep. Pelath

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X

X

**GENERAL  
DEDICATED  
FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** The bill creates a license under the jurisdiction of the Alcohol and Tobacco Commission that permits gambling on electronic gaming devices in establishments that hold permits issued by the Commission. The bill imposes an annual establishment license fee of \$1,000 for each electronic gaming device and limits the number of electronic gaming devices that an establishment may have. The bill creates a license for suppliers of electronic gaming devices and requires suppliers to pay a \$5,000 annual fee. The bill establishes the Electronic Gaming Fund for the deposit of license fees and taxes. The bill also imposes a wagering tax equal to 15% of the adjusted gross receipts from electronic gaming wagering. The bill appropriates sufficient funds to the Commission to administer electronic gaming and distributes the remaining tax and license revenues as follows: (1) 40% to the cities. (2) 30% to the counties. (3) 30% to the towns. The bill requires the local distributions to be used for police and fire pensions.

The bill provides that a police officer or firefighter who retires or becomes disabled after December 31, 2004, is entitled to a pension based on the salary of the rank held at the time of retirement or disability. It also provides that a surviving spouse of a police officer or firefighter who dies after December 31, 2004, is entitled to an annuity based on the salary of the rank held at the time of the death of the police officer or firefighter. The bill also provides that certain surviving children of a police officer or firefighter who dies after December 31, 2004, are entitled to an annuity based on the salary of the rank held at the time of the death of the police officer or firefighter. The bill increases the amount that must be appropriated from court fees to a pension trust for the sheriff's department.

**Effective Date:** July 1, 2003.

**Explanation of State Expenditures:** *Electronic Gaming Device Administration:* Under the bill, the Alcohol and Tobacco Commission (ATC) is given the power and duty to administer, regulate, and enforce distribution and operation of electronic gaming devices (EGDs), except in the case of EGDs operated in river boat casinos. The bill creates two licenses relating to operation and distribution of EGDs. The Establishment

License permits certain alcoholic beverage retail establishments to operate up to five EGDs. However, if the establishment is a social or fraternal club, the Establishment License permits operation of up to 20 EGDs. The bill prohibits alcohol beverage retailers that are horse race tracks or that hold supplemental retailer's permits (allowing Sunday sales) to obtain an Establishment License. The Supplier's License permits a person to own more than 20 EGDs and to distribute, sell, or lease EGDs to a person holding an Establishment License. The bill prohibits the holder of a Supplier's License from owning, managing, or controlling an establishment with an Establishment License. The ATC is required to conduct background investigations of each license applicant. The State Police Department is required to assist the Commission in conducting background investigations and will be reimbursed for costs incurred. The bill establishes the Electronic Gaming Fund and requires EGD license fee receipts and wagering tax revenue (see below under *Explanation of Local Revenues*) to be deposited in the Fund. The Fund is to be administered by the ATC and does not revert to the state General Fund. The bill provides that the administrative cost incurred by the ATC would be paid from this Fund.

It is estimated that the ATC will require three additional COMOT III staff members to process the additional license applications. Approximately 2,800 retail establishments will be eligible for licenses to operate EGDs. In addition, there could potentially be a pool of as many as 180 individuals in Indiana that could apply for a Supplier's License under the bill. Currently, the ATC has five staff members who annually process approximately 12,000 alcoholic beverage permits (new applications and transfers of retailer and dealer permits). The total cost for three COMOT III staff members, including salary, fringe benefits, and indirect costs, is estimated to be \$63,737 in FY 2004 and \$62,545 in FY 2005. This bill will increase the inspection and enforcement duties of excise police officers. If there is an increase in the number of violations cited, there would be an increase in costs associated with court appearances, depositions, and report drafting. The majority of excise police officers are POLE II staff members. If additional excise police officers were hired as POLE II officers, the estimated cost per officer of salary, benefits, and equipment would be \$33,305 in FY 2004 and \$32,767 in FY 2005. The Commission will also need to upgrade its computer system to be able to track both alcoholic beverage permits and EGD licenses.

*Penalty Provisions:* This bill provides that tampering with or manipulating electronic gaming devices (excluding coin-operated games for amusement only) constitutes a Class D felony. Buying, selling, leasing, or distributing an unlicensed electronic gaming device would also be a Class D felony under this proposal. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$25,087 in FY 2001. Individual facility expenditures ranged from \$18,520 to \$54,465. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

**Explanation of State Revenues:** *EGD Revenue:* This bill provides for the ATC to determine the annual fee for the Establishment License, but sets the maximum fee at \$1,000 per device. It is not known how many permit holders would apply for an Establishment License. However, it is important to note that the Lottery Commission estimated in a 1993 study that there were between 10,000 and 15,000 video lottery machines being used illegally in the state. The table below illustrates the type and estimated number of qualified establishments, the maximum number of devices allowed at each type of establishment, and the maximum number of devices per type of establishment.

<b>Maximum Number of Electronic Gaming Devices.</b>			
<b>Qualified Establishments</b>	<b>Number of Establishments</b>	<b>Number of Devices Permitted</b>	<b>Maximum Number of Devices Per Establishment Type</b>
Retail Permit Holders*	1,692	5	8,460
Club Permit Holders**	1,105	20	22,100
<b>TOTAL</b>	<b>2,797</b>		<b>30,560</b>
*Beer retailers, wine retailers, liquor retailers, restaurants, and hotels except those holding “supplemental permits” that allow the retailer to sell alcoholic beverages on Sunday. **Club permit holders include social and fraternal clubs.			

Assuming the license fee is set at \$1,000 and all of the qualified establishments license at least one EGD, license revenue would equal approximately \$2.8 M annually. If half of the qualified establishments license five gaming devices, license revenue would equal approximately \$7.0 M per year. If all of the qualified establishments license the maximum number of devices authorized in this bill, permit revenue would equal approximately \$30.6 M per year.

The bill also provides for the ATC to determine the annual Supplier’s License fee, but sets the maximum fee at \$5,000. If 180 operators are licensed (see *Explanation of State Expenditures*), revenue from the license fee would total \$900,000 annually.

The bill also imposes a Wagering Tax equal to 15% of the adjusted gross wagering receipts (AGR) received by a license holder from EGD wagering. (AGR is the total receipts from EGD wagering minus the amount paid as winnings.) As data and analysis are unavailable at this time indicating the potential receipts that alcohol beverage retailers may derive from EGD operations, the impact of this tax is indeterminable.

*Electronic Gaming Fund:* The bill establishes the Electronic Gaming Fund consisting of license fee and wagering tax revenue. Each year, money remaining in the Fund after ATC administrative costs are paid must be distributed as follows: (1) 40% to cities; (2) 30% to counties; and (3) 30% to towns. The bill requires these local units to use the money for police officers’ and firefighters’ pensions.

*Other Revenue:* This bill may increase the number of EGDs sold, increasing Sales Tax revenue. Sales Tax revenue is deposited in the state General Fund, the Property Tax Replacement Fund, and three other dedicated funds. In addition, an increase in the sale of EGDs will increase income tax revenue from any manufacturers and distributors located in Indiana. The use of EGDs by licensees could also increase their income, resulting in increased income tax revenue. Revenue from the Adjusted Gross Income (AGI) Tax is deposited in the state General Fund and the Property Tax Replacement Fund.

If allowing operation of EGDs in alcoholic beverage retail establishments increases sales, revenue from the Alcoholic Beverage Excise Tax may increase. Alcoholic Beverage Excise Tax revenue is deposited in the state General Fund, the Post War Construction Fund, the Alcohol and Tobacco Commission’s Enforcement and Administration Fund, the Pension Relief Fund, the Addiction Services Fund, and the Wine Grape Market Development Fund.

*Penalty Provisions:* If additional court cases occur and fines are collected, revenue to both the Common

School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

**Explanation of Local Expenditures:** *Police Officers' and Firefighters' Pension Section:* The impact is based on the estimate that the salary of the rank would on average be 20% higher than first class salary at a member's retirement. For the 1925, 1937, and 1953 funds, (Old Plan) it is estimated that there would be a decrease in the unfunded actuarial liability of approximately \$122 M. The decrease is the result of the net effect of the increase in benefits due to the use of the salary of the rank and the decrease in benefits due to the reduction in the benefit formula from as high as 74% down to 50%.

The impact to the 1977 Police Officers' and Firefighters' Fund is as follows.

Estimated Increase in Unfunded Accrued Liability	\$120.6 M
Estimated Increase in Annual Funding	\$12.7 M
Employer Contribution Percentage*	19.8%

\*Although this is a decline in the contribution as a percent of payroll, payroll is now the "salary of the rank" which is assumed to be 20% greater than 1<sup>st</sup> Class salary.

*Penalty Provisions:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

**Explanation of Local Revenues:** *EGD Revenue:* The bill distributes money in the Electronic Gaming Fund to counties, cities, and towns to pay for police and fire pensions (see above under *Explanation of State Revenues* for more detail). In addition, if allowing operation of EGDs in alcoholic beverage retail establishments increases sales, revenue from the Alcoholic Beverage Excise Tax may increase. Fifty percent of Alcoholic Beverage Excise Tax revenue deposited in the state General Fund is allocated to cities and towns.

*County Sheriff Section:* This provision increases the amount from the current \$12 to \$24 for each verified claim presented by the sheriff to the county fiscal body for each service of a writ, order, process, notice, tax warrant, or other paper completed by the sheriff. These funds are currently appropriated to the pension trust of each county which has established a pension trust. In CY 2001, counties received \$16.6 M from court fees from which a portion of these fees are appropriated to the pension trust fund. The specific amount will vary by county and depend upon the number of verified claims presented by the sheriff.

*Penalty Provisions:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

**State Agencies Affected:** Alcohol and Tobacco Commission, Department of Correction.

**Local Agencies Affected:** Trial courts, local law enforcement agencies; counties with pension trust funds; cities and towns with members in the Police Officers' and Firefighters' Pension Funds.

**Information Sources:** Indiana Sheriffs Association; Department of Correction; Vicki Stephens, Controller, Alcohol and Tobacco Commission, (317) 232-2436. Don Oaky, Excise Industry Liaison, Alcoholic and Tobacco Commission, (317) 232-2463. Lottery Commission Report on Video Lottery, 1993; Local Government Database; Doug Todd of McCready & Keane, Inc., actuaries for the Police and Fire Funds, 576-1508; State Court Administrator's Annual Report for CY 2001.

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**Additional Information/Definitions:**

**Actuarial Liability:** The excess of the present value of all benefits thereafter payable under the system over the present value of future normal costs.

**Contribution Rate:** as to an employee, a factor, such as a percentage of compensation, used in determining the amounts of payments to be made by the employee under a contributory pension plan. As to the employer, a factor, calculated in an actuarial valuation, to be used in determining the employer's annual normal cost contribution under a pension plan. An employer's contribution rate may be either a percentage to be applied to the total compensation paid to covered employees for a particular year, or an amount in dollars to be applied to the total number of covered employees at a particular date.

**Converted Plan Members** hired before May 1, 1977, who have elected to convert to the benefit structure under the 1977 Act.

**Funding:** A systematic program under which assets are set aside in amounts and at times approximately coincident with the accruing of benefit rights under a retirement system.

**Non-Converted 1977 Plan Members** hired after April, 30, 1977, all of whom are covered by the benefit structure under the 1977 Act.

**Old Plan:** Members hired before May 1, 1977, who have not elected to convert to the benefit structure under the 1977 Act.

**Unfunded Actuarial Liability** (sometimes called the unfunded liability) of a retirement system at any time is the excess of its actuarial liability as that time over the value of its cash and investments.