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**FISCAL IMPACT STATEMENT**

**LS 6154**

**BILL NUMBER: SB 95**

**NOTE PREPARED:** Nov 23, 2009

**BILL AMENDED:**

**SUBJECT:** Prohibit Smoking in Public Places.

**FIRST AUTHOR:** Sen. Errington

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:**  GENERAL  
 DEDICATED  
 FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** The bill prohibits smoking in public places and places of employment. It establishes certain civil penalties for violations. It requires that the civil penalties collected for violations be deposited into the Tobacco Use Prevention and Cessation Trust Fund.

The bill also repeals a provision in the current Clean Indoor Air Laws that are not consistent with this act.

**Effective Date:** July 1, 2010.

**Summary of NET State Impact:** *Gaming Tax Revenue:* The smoking prohibition is estimated to reduce revenue from the riverboat wagering tax, riverboat admission tax, and slot machine wagering tax. The smoking prohibition also is estimated to increase payments to replace shortages in riverboat admission tax distributions to local units and state agencies. The potential impact of the smoking prohibition on tax revenue from parimutuel wagering at racetracks and off-track betting facilities, charity gaming, and Type II gaming at bars and taverns is unknown. The table below summarizes the estimated net impact to the state from reduced collections of taxes on the riverboat casinos and racinos as a result of the smoking prohibition.

	Fund	FY 2011	FY 2012
Gaming Taxes	General Fund	(\$91.5 M - \$180.4 M)	(\$91.5 M - \$180.4 M)
Admission Tax Replacement	General Fund	\$0.0	(\$2.8 M - \$5.7 M)
Gaming Taxes	Other Funds	(\$0.6 M - \$1.2 M)	(\$0.6 M - \$1.2 M)
<b>Total</b>		<b>(\$92.1 M - \$181.6 M)</b>	<b>(\$94.9 M - \$187.3 M)</b>

**Explanation of State Expenditures:** *Riverboat Admission Tax Replacement Payments:* Reductions in riverboat admission tax collections due to the smoking prohibition would increase annual payments made from the state General Fund to offset shortages in admission tax distributions to certain local units, the Division of Mental Health, and the State Fair Commission. It is estimated that the increased payments could total \$2.8 M to \$5.7 M annually beginning in FY 2012.

Under current statute, local units, the Division of Mental Health, and the State Fair Commission which receive admission tax revenue from the riverboat casinos (excluding the French Lick Casino) are annually guaranteed to receive an amount of revenue equal to the distribution amount received in FY 2002. If the distribution received in a fiscal year is less than the FY 2002 distribution amount, the local unit or state agency receives a payment equal to the shortage from the state General Fund by September 15<sup>th</sup> of the following fiscal year. (Note: The admission tax guarantee does not apply to local units or state agencies receiving admission tax revenue from the French Lick Casino.)

*Enforcement of Smoking Prohibition:* The bill specifically allows the Indiana State Department of Health (ISDH), the Alcohol and Tobacco Commission, their designees, and the Division of Fire and Building Safety to enforce the smoking ban and respond to filed complaints alleging noncompliance. Also local fire departments may enforce the ban as part of their inspection programs.

*Background-* Under current law, the Clean Indoor Air Law is under the sections of the Indiana Code concerning the ISDH. Enforcement of the statute is not assigned, meaning that it is enforced by law enforcement officers.

There are no data available to estimate the number of public places where enforcement will occur. These state agencies could enforce the smoking ban with their own enforcement agents or delegate enforcement to other local agencies. (Under IC 34-28-5, all law enforcement officers have authority to enforce infractions.) Also, they could actively enforce the smoking ban or choose to only investigate complaints received. These management decisions will determine the additional staffing requirements.

**Explanation of State Revenues:** *Gaming Tax Revenue:* The smoking prohibition would apply to: (1) pari-mutuel horse racetracks; (2) off-track betting facilities; (3) facilities where charitable gaming is conducted; (4) riverboat casinos; and (5) racinos. The smoking prohibition also would apply to bars and taverns conducting Type II gaming. The table below summarizes the estimated state revenue loss from taxes imposed on the riverboat casinos and racinos as a result of the smoking prohibition.

<b>Tax</b>	<b>Annual Revenue Loss</b>
Riverboat Wagering Tax	\$79.4 M - \$156.3 M
Riverboat Admission Tax	\$0.9 M - \$1.8 M
Slot Machine Wagering Tax	\$11.8 M - \$23.5 M
<b>Total</b>	<b>\$92.1 M - \$181.6 M</b>

The revenue loss estimates are based on the May 27, 2009, Revenue Technical Committee forecast of FY 2011 adjusted gross receipts (AGR) from gaming at the state's riverboat casinos and racinos and attendance at the riverboat casinos. (Note: The revenue loss estimate will be updated when the Revenue Technical Committee issues a new revenue forecast on December 15, 2009.) The lower bound estimates assume attendance reductions of 5% and AGR reductions of 10%. The higher bound estimates assume attendance reductions of 10% and AGR reductions of 20%.

The table below summarizes the estimated state revenue loss by affected fund or agency as a result of the smoking prohibition.

<b>Fund/Agency Affected</b>	<b>Annual Revenue Loss</b>
General Fund	\$91.5 M - \$180.4 M
West Baden Historic Hotel Preservation and Maintenance Fund	\$0.5 M - \$1.1 M
Indiana Economic Development Corporation	\$60,000 - \$120,000
<b>Total</b>	<b>\$92.1 M - \$181.6 M</b>

The potential impact of the smoking prohibition on tax revenue from parimutuel wagering at racetracks and off-track betting facilities, charity gaming, and Type II gaming at bars and taverns is unknown. Any reductions in these revenue sources would affect the state General Fund, the Build Indiana Fund, the Livestock Industry Promotion and Development Fund, and the State Fair Commission. In FY 2009, the parimutuel taxes generated \$4.2 M, the charity gaming excise tax generated \$1.4 M, and the Type II gaming excise tax generated about \$300,000.

*Enforcement of Smoking Prohibition:* There are no data available to indicate if more people will violate smoking prohibitions due to changes in:

- the definition of public places,
- the addition of places of employment, or
- the exemptions from regulation.

Also, there are no data available to indicate if more people will violate the smoking ban with the addition of a reasonable distance of a public place or place of employment or in designated areas added to the element of the ban.

The bill decreases the penalty for smoking in a prohibited area from a Class B infraction to a Class C infraction, and it removes an enhanced penalty of a Class A infraction for repeat offenses. For all violations of the ban, the bill imposes a fine of \$50, which is to be deposited in the Tobacco Use Prevention and Cessation Trust Fund.

Additionally, the bill imposes a Class C infraction on the official in charge of a public place, place of employment, or other area where smoking is prohibited for failing to meet the requirements of the law. Currently, there is no specific penalty for this violation. The civil judgment increases based on prior offenses as follows:

\$100 - First offense.

\$200 - Second offense within a year of a previous violation.

\$500 - Subsequent offense within a year of a previous violation.

The bill provides that each day a violation occurs is a separate violation of the section. All judgements collected under this section will be deposited in the Tobacco Use Prevention and Cessation Trust Fund.

*Background - Gaming Tax Revenue:* The smoking prohibition as applied to Indiana's casinos and racinos could potentially lead to significant reductions in revenue from the riverboat wagering tax, the riverboat admission tax, and slot machine wagering taxes. These reductions would occur to the extent that the smoking ban: (1) reduces attendance by smoking patrons at the riverboat casinos and racinos without replacement by other patrons; and (2) reduces the gaming intensity by smoking patrons - the average amount of time smoking patrons spend gambling - when they do go to a casino or racino. The reduction in admission tax revenue also would lead to an increase in supplemental admission tax replacement payments from the state General Fund to local units and state agencies receiving admission tax revenue.

It is estimated that overall attendance reductions could be as high as 10% and overall reductions in adjusted gross gaming receipts could be as high as 15% to 20%. These impact estimates are based on econometric studies of smoking ban impacts on casinos in Delaware and Illinois. Econometric research estimating the impact of a smoking ban on slot machine revenue in Victoria, Australia, as well as data on slot machine performance in Pennsylvania casinos after a smoking ban commenced also confirms the results of the Delaware and Illinois studies.

*Enforcement of Smoking Prohibition:* The maximum judgment for a Class B infraction is \$1,000, while the maximum judgment for a Class C infraction is \$500. Proceeds from infraction judgments are deposited in the state General Fund. Court fees of \$70 are charged for infractions.

The Tobacco Use Prevention and Cessation Trust Fund is operated by the State Department of Health to make grants to implement the long-range state plan and pay the general operating and administrative expenses of the executive board of the Fund. The Fund consists of money distributed from the Indiana Tobacco Master Settlement Agreement Fund by statute; appropriations from other sources; grants, gifts, and donations; and accrued interest. Money in the fund at the end of a state fiscal year does not revert to the state General Fund.

#### **Explanation of Local Expenditures:**

**Explanation of Local Revenues:** *Gaming Tax Revenue:* The smoking prohibition is estimated to reduce

distributions to certain local units from the riverboat wagering tax, the riverboat admission tax, the county slot machine wagering tax, and the supplemental slot machine wagering tax. The reduction could total \$4.5 M to \$10.8 M annually. The potential local revenue losses from riverboat taxes beginning in FY 2011 are described in the table below.

<b>Riverboat Casino Taxes</b>	<b>Annual Revenue Loss</b>	
<b>Recipients</b>	<b>Wagering Tax</b>	<b>Admission Tax</b>
Michigan City	\$0 - \$1.0 M	-
Rising Sun	\$0.8 M - \$1.7 M	-
Gary	\$0.8 M - \$2.4 M	-
Orange County	\$0.2 M - \$0.5 M	\$52,000 - \$0.1 M
Orleans	\$0.1 M - \$0.3 M	\$12,000 - \$24,000
Paoli	\$0.1M - \$0.3 M	\$12,000 - \$24,000
French Lick	\$0.2 M - \$0.4 M	\$24,000 - \$47,000
West Baden Springs	\$0.2 M - \$0.4 M	\$24,000 - \$47,000
Orange County Dev. Commission	\$0.2 M - \$0.4 M	\$24,000 - \$47,000
Orange County CVB	\$14,000 - \$27,000	-
<b>Total</b>	<b>\$2.7 M - \$7.4 M</b>	<b>\$0.1 M - \$0.3 M</b>

The potential local revenue losses from slot machine taxes beginning in FY 2011 are described in the table below.

<b>Slot Machine Taxes</b>	<b>Annual Revenue Loss</b>	
<b>Recipients</b>	<b>County Tax</b>	<b>Supplemental Tax</b>
Madison County	\$0.6 M - \$1.2 M	-
Shelby County	\$0.6 M - \$1.1 M	-
French Lick Casino	-	\$0.4 M - \$0.8 M
<b>Total</b>	<b>\$1.2 M - \$2.3 M</b>	<b>\$0.4 M - \$0.8 M</b>

A local unit that is a docksite for a riverboat casino (other than local units receiving wagering tax revenue from the French Lick Casino) receives 25% of the wagering tax generated by the riverboat casino up to a maximum of the distribution amount the local unit received in FY 2002. In the case of the riverboat casinos in Gary, Michigan City, and Rising Sun, wagering tax revenue is estimated to decline under one or both scenarios by an amount sufficient that the 25% share is less than the cap amount.

The local units receiving wagering tax revenue and admission tax revenue from the French Lick Casino, and

wagering tax revenue from the racinos, all receive a fixed percentage of this revenue. Therefore, the AGR and attendance declines due to the smoking prohibition would reduce the revenue to these local units.

*Court Fees:* The court fees are \$70 for infractions.

**State Agencies Affected:** ISDH, Alcohol and Tobacco Commission, their designees, and the Division of Fire and Building Safety.

**Local Agencies Affected:** Fire departments.

**Information Sources:** Legislative Services Agency, *Smoking Ban Impacts on Gaming Revenue*, August 20, 2009 (memo presented to the Gaming Study Committee on August 14, 2009). Mandel, L, B. Alamar, and S. Glantz. "Smoke-Free Law Did Not Affect Revenue from Gaming in Delaware." *Tobacco Control*, vol. 14 (February 2005), pp. 10-12. Glantz, S. And B. Alamar. "Erratum to Mandel, L.L., Alamar, B.C., and Glantz, S.A.. 'Smoke-free Law Did Not Affect Revenue from Gaming in Delaware.'" *Tobacco Control*, vol. 14 (February 2005), pp. 10-12." *Tobacco Control On-Line (Electronic Letters)*, May 23, 2005. Pakko, M. "Smoke-free Law Did Affect Revenue from Gaming in Delaware." *Tobacco Control*, vol. 15 (February 2006), pp. 68-69. Pakko, M. "No Smoking at the Slot Machines: The Effect of a Smoke-Free Law on Delaware Gaming Revenues." *Applied Economics*, vol. 40 (July-August 2008), pp. 1769-74. Thalheimer, R. and M. Ali. "The Demand for Casino Gaming with Special Reference to a Smoking Bank." *Economic Inquiry*, vol. 46 (April 2008), pp. 273-282. Garrett, T. And M. Pakko. "Casino Revenue and the Illinois Smoking Ban." Working Paper 2009-027A, Research Division, Federal Reserve Bank of St. Louis, Working Paper Series, <http://research.stlouisfed.org/wp/2009/2009-027.pdf>. Lal, A. And M. Siahpush. "The Effect of Smoke-Free Policies on Electronic Gaming Machine Expenditure in Victoria, Australia." *Journal of Epidemiology and Community Health*, vol. 62 (January 2008), pp. 11-15.

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