

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1502

Bill Subtitle: TO PROVIDE FUNDING FOR THE MAINTENANCE, IMPROVEMENT, AND CONSTRUCTION OF HIGHWAYS, ROADS, STREETS, AND BRIDGES IN THE STATE; AND TO LEVY A PRIVILEGE TAX ON CASINO GAMES.

Basic Change :

Sponsor: Rep. J. Mayberry

The bill provides funds for Arkansas highways, streets, and roads by the transfer of General Revenue funds resulting from casino gaming and the levy of fees on casino gaming machines.

Casino gaming tax receipts earmarked for state general revenues in accordance Constitutional Amendment 100 would be transferred from State General Revenues with 70% of the transferred amount designated for transfer to the State Highway and Transportation Fund; 15% to the County Aid Fund; and 15% to the Municipal Aid Fund. Constitutional Amendment 100 provides for the levy of a tax at the rate of 13% of on a casino's first \$150,000,000 of net casino gaming receipts each year and a tax at the rate of 20% on a casino's net casino gaming receipts exceeding \$150,000,000. Of the taxes reported, 55% is deposited to State General Revenues. The proposal would transfer the State General Revenue portion for highways, streets and roads.

This bill would also levy an annual privilege tax on each casino operating one (1) or more casino games in this state. A casino game means a game played with cards, dice, equipment, or any mechanical, electromechanical, or electronic device or machine for money, property, checks, credit, or any representative value.

A casino operating ten (10) or fewer casino games will pay \$50 for one casino game; \$100 for two casino games; \$200 for 3 casino games; \$375 for four casino games; \$875 for five casino games; \$1,500 for six or seven casino games and \$3,000 for eight or more casino games. A casino operating more than ten (10) casino games will pay \$500 for each of the first 16 casino games; \$4,800 for casino games 17 to 26, inclusive; \$2,800 for casino games 27 to 35, inclusive; \$100 for each casino game over 35.

This privilege tax would be paid at the time of casino licensing and annually thereafter. All casino games operated or conducted in one (1) room or a group of rooms in the same or a contiguous building are considered one (1) casino operation, and the privilege tax to be paid shall be determined on the aggregate number of casino games in each room or group of rooms in the same or a contiguous building. The revenue from this privilege tax is to be special revenue and shall be credited to the State Highway and Transportation Department Fund.

Revenue Impact :

FY 2020

-\$31,200,000 Loss to State General Revenues -- Transferred Casino Gaming Tax Receipts
+\$21,840,000 Gain to State Highway and Transportation Fund -- Casino Gaming Tax Receipts
+\$ 4,680,000 Gain to County Aid Fund -- Casino Gaming Tax Receipts
+\$ 4,680,000 Gain to Municipal Aid Fund -- Casino Gaming Tax Receipts
+\$ 475,000 Gain to State Highway and Transportation Fund -- Annual Casino Games Privilege Tax

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FY2021

-\$52,000,000 Loss to State General Revenues -- Transferred Casino Gaming Tax Receipts
+\$36,400,000 Gain to State Highway and Transportation Fund -- Casino Gaming Tax Receipts
+\$ 7,800,000 Gain to County Aid Fund -- Casino Gaming Tax Receipts
+\$ 7,800,000 Gain to Municipal Aid Fund -- Casino Gaming Tax Receipts
+ \$750,000 Gain to State Highway and Transportation Fund -- Annual Casino Games Privilege Tax

[FY2020 Estimate of Casino Games Privilege Tax based on number of machines and devices at the two existing Electronic Games of Skill locations in Arkansas. FY2021 estimate assumes one additional casino location in operation in Arkansas.]

Taxpayer Impact :

Casino license holders would remit Annual Casino Games Privilege Tax based on the number of gaming machines in their facilities.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

This proposal will require modifications to the state's tax system to allow for the new distribution method of funds collected for this tax type.

Other Comments :

This proposal does not specify when the casino game count is to be conducted for purposes of calculating the amount of privilege tax due. The privilege tax is to be paid annually but no specific date is provided in the bill. The proposal should be amended to provide a specific date for when the count is to be taken and the date for remittance of the tax due.

The number of casino games may vary each month during a year with new machines being added while older machines are removed. It is not clear if the privilege tax is to apply to each machine used at any time during the year or only to be calculated on the count as of a certain date. The bill should provide clarity as to the intent for the calculation of the privilege tax.

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Legal Analysis :

This bill uses monies raised by the Arkansas Casino Gaming Amendment of 2018 ("Amendment") to fund road maintenance in the state. This bill will credit 70% of Amendment General Revenues to the State Highway and Transportation Department Fund, 15% to the County Aid Fund, and 15% to the Municipal Aid Fund in a manner similar to the current distribution of motor fuel taxes.

The bill requires that the Director of the Department of Finance and Administration to certify the amount of casino gaming revenue funds that are distributed to General Revenue. However, the Amendment technically places the responsibility of distribution on the State Treasurer. This section may need to be modified to reflect language provided in the Amendment.

The bill also creates an annual privilege tax on casino games. The privilege tax on the casino games would be paid annually by casino operators on each "game" as defined by the bill. The rate of privilege tax is dependent upon the number of games the casino operator has on the floor. Revenues generated by the privilege tax are to be credited to the State Highway and Transportation Department Fund.

The definition of "casino game" is unclear. The bill excludes "[a] slot machine or card game that is not utilized as an adjunct to or a unit of a banking, percentage, or mechanical device or machine." This definition is unclear and may create an administrative burden and ambiguity in implementation.

The privilege tax may raise constitutional concerns as it is unclear whether the Amendment would preempt the imposition of additional taxes on casino gaming. Amendment 100 provides a limitation by defining the specific net casino gaming tax, however it does not specifically prohibit a tax or fee on the physical games. Because of this potential ambiguity, there is a possibility of a challenge to any tax on the games as a violation of Amendment 100.