Local Government Mandate Statement
Kentucky Legislative Research Commission
2023 Regular Session

Part I: Measure Information

Bill Request #: 1119

Bill #: HB 256

Document ID #: 2919

Bill Subject/Title: AN ACT relating to the regulation of electronic gaming devices and making an appropriation therefor.

Sponsor: Representative Tom Smith

Unit of Government: ____ City ____ County ____ Urban-County
____ Charter County ____ Consolidated Local ____ Unified Local Government

Office(s) Impacted: __________

Requirement: _____ Mandatory ____ Optional

Effect on
Powers & Duties: ____ Modifies Existing ____ Adds New ____ Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

This local mandate will only consider those sections affecting local governments.

Section 1:
Establishes KRS Chapter 239 and creates a new section to define various terms throughout the chapter. Some terms are “electronic gaming device,” “local county government,” and “vending machine.” Local county government means a county, charter county, consolidated local government, unified local government, or urban-county government.

Section 9:
Creates a new section of KRS Chapter 239 to provide that local governments **may**:

- review applications of operator licenses who wish to supply electronic gaming devices to locations within a county;
- approve the number of games allowed at a location; and

- limit the number of electronic gaming devices to not more than six at a convenient store, not more than twelve at a truck stop, and not more than six at a private club.

Section 9:
Requires local county governments to:
- enact ordinances to regulate the place and number of locations that offer electronic gaming devices;
- enact an ordinance to prohibit the use of electronic gaming machine at locations within its territory; or
- submit to the voters the question of prohibiting locations from operating electronic gaming devices within its territory

Section 10-11:
Provides that a licensed operator shall not have a private discussion or dealings with local county government employees.

Provides that a person shall be guilty of a Class A misdemeanor if the person makes a false statement on a license application or permits a person less than 21 years old to play an electronic gaming machine.

Provides that a person shall be guilty of a Class D felony who knowingly or intentionally does any of the following:
- Uses or possess with the intent to use a device to manipulate the outcome, analyze the probability of an outcome, or analyze the strategy for playing or betting to be used in the electronic gaming device;
- Manufactures, sells, or distributes anything to be used to commit the violations herein;
- Cheating in order to claim, collect, take, or attempt to claim, collect, or take money or anything of value from an electronic gaming device;
- Uses or possesses counterfeit chips or tokens;
- Except for a licensee or an employee of a licensee acting in the course of the employee's employment, be in possession of a key or device designed for:
    - opening, entering, or affecting the operation of an electronic gaming device, drop box, or an electronic or a mechanical device connected with an electronic gaming device; or
    - removing coins, tokens, chips, or other contents of an electronic gaming device.
- Possess materials used to manufacture a slug or device intended to be used to commit the violations herein.

Section 13:
Establishes the Kentucky Gaming Account made up of moneys received from an excise tax imposed on the operator of electronic gaming devices at a rate of 26% on the net proceeds made through an electronic gaming device located in Kentucky, any fees, fines, and monetary penalties collected by the commission, state appropriations, gifts, grants, and

federal funds. The remaining funds after the commission retains a balance of $5 million in each fiscal year shall be distributed as follows:

- 38% to the local sheriffs of the counties in which the licensed machines are located.
- 38% distributed to local county governments of the counties in which the licensed machines are located.

The above allocations shall be based proportionately on tax dollars collected by the county to the total amount collected statewide in the preceding month. These moneys are appropriated for the purposes contained in the legislation. The General Assembly may not appropriate or transfer these funds for any other purposes.

The fiscal impact of HB 256 on local governments is expected to be moderate.
It requires the local county government to either enact an ordinance regulating the gaming devices or to ban them, or to put the matter on the ballot for voters to decide whether to allow them in their locality.

Local governments that choose to create ordinances will incur costs associated with the drafting, publication, indexing and recording of adopted ordinances, and at least every five years, review and eliminate redundant, obsolete, inconsistent, and invalid provisions.

According to Kentucky League of Cities, most cities, especially the smaller ones, retain their city attorney on contract and pay on an hourly basis. Time spent drafting an ordinance is influenced by its complexity and the amount of research that is necessary. Currently (FY 2020), the average hourly rate was $107. Rates for legal notices vary greatly depending on the length of the publication, the number of times it needs to be published and the newspaper in which the publication is placed. Therefore, these costs are unknown.

There are additional programming costs associated with adding a new category (local option question) to the ballot on an already scheduled statewide election.

The impact of the tax revenue generated of which 38% would go to the local sheriff and 38% would go to the local county government of the counties from where the tax was generated is undeterminable. Since the specific electronic gaming devices as defined in Section I of HB 256 are not currently regulated in Kentucky, we do not have historical data on which to provide an estimate. Likewise with data from other states, there simply hasn't been enough solid data collected. We can, however, assume that as the number of these devices increase, so would the tax revenue from the games.

Sections 10 and 11 provide for Class A misdemeanor and Class D felony crimes. The impact of these new crimes on local jails is detailed below:

Class A misdemeanor:
A person convicted of a Class A misdemeanor may be incarcerated for up to twelve months. Misdemeanants are housed in one of Kentucky's 74 full-service jails or three life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on an average cost to incarcerate of $40.11 per day. most of misdemeanor defendants

are granted bail, those who do not will also cost local jails an average cost to incarcerate of $40.11 per day.

Class D felony:

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 74 full-service jails or three life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an average cost to incarcerate of $40.11, which includes the $35.34 per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a Class D felon is housed in one of Kentucky's full-service jails for the duration of his or her sentence. The Department of Corrections pays a jail $35.34 per day to house a Class D felon. The per diem may be less than, equal to, or greater than the actual housing cost.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II refers to HB 256 as introduced. There are no prior versions.

Data Source(s): LRC Staff, Kentucky Department of Corrections; Kentucky League of Cities

Preparer: WB (RB) **Reviewer:** KHC **Date:** 2/28/23