


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: October 2, 2020

SUBJECT: Fiscal Impact Statement – Revised Game of Skill Machines Consumer Protections Emergency Amendment Act of 2020

REFERENCE: Draft Bill as provided to the Office of Revenue Analysis on September 28, 2020

Conclusion

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

Background

The District first began regulating game of skill machines in the District in early 2020.¹ Game of skill machines are mechanical or electronic devices where the ability to win is not influenced by prior wins or losses, outside sources, chance, or unreasonable or unknown skill requirements. Beginning in fiscal year 2021, the District will implement a more robust regulatory regime around games of skill led by the Office of Lottery and Gaming (OLG).² OLG will issue rules to regulate games of skill including inspection standards, payment and payout parameters, fees and taxation, accounting, posting requirements, record retention, penalties for violations, and device controls. OLG will license industry participants and the Alcoholic Beverage Control Board (Board) will offer an alcoholic beverage license endorsement for its licensees to provide games of skill. OLG needs to establish a central accounting system to which every game of skill machine must connect for the purposes of

¹ COVID-19 Response Emergency Amendment Act of 2020, enacted March 17, 2020 (D.C. Act 23-247; 67 DCR 3093).

² Fiscal Year 2021 Budget Support Act of 2020, enacted August 31, 2020 (D.C. Act 23-407; 67 DCR 10493).

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tracking cash inserted, winnings paid, and credits awarded and played. The central accounting system will help the District track game of skill gross revenues which are the basis for the ten percent tax that machine hosting retailers are responsible for paying. The Board and the Alcoholic Beverage Regulation Administration (ABRA) will regulate and enforce the restrictions around where machines can be placed, who can play them, and how licensed retailers can advertise the presence of games of skill.

The bill amends several provisions regulating games of skill and clarifies the deadlines to meet certain implementation requirements. The bill eliminates the OLG licensure category of supplier and assigns its functions of supplying game of skill parts or components to a licensed manufacturer or distributor. The bill exempts institutional investors in a prospective license applicant from also being approved for licensure unless the institutional investor holds a greater than 25 percent stake in the applicant.³ The bill allows a distributor to provide funding to a licensed retailer for the payment of winnings to players, while maintaining prohibitions on providing other items of value such as loans or other incentives. The bill amends the testing requirements by requiring that every model or version of a game of skill be tested and approved rather than each individual game of skill machine.⁴ The bill eliminates the requirement that a machine pay in winnings a minimum of 80 percent of played amounts over the machine's lifetime. The bill makes it permissive, at the discretion of OLG, that a distributor or retailer obtain insurance on a game of skill machine placed at a licensed retailer.

The bill establishes that no participant in the game of skill industry in the District can continue to operate after March 31, 2021 if they have not been licensed as a manufacturer, distributor, or retailer. This deadline also applies to any industry participants who were approved to operate by the Board prior to OLG assuming regulatory control of games of skill activities in the District. The bill also gives OLG 365 days from the bill's effective date to solicit, procure, and operationalize the central accounting system. The bill then requires OLG to give distributors and retailers no less than 90 days' notice from the date the central accounting system is operationalized for machines to connect to the system.

The bill also changes the burden of paying the ten percent tax on the game of skill gross revenues from a licensed retailer to the owner of a game of skill machine.

Financial Plan Impact

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. Currently, the Board has certified two versions of one game of skill and has approved 43 endorsements for licensed retailers to host machines. OLG will be taking over the regulatory regime beginning October 1, 2020. The costs associated with establishing the licensing regime for manufacturers, distributors, and retailers, including the bill's process changes, by March 21, 2020 can be absorbed within the funding provided for the Games of Skill Consumer Protection

³ Currently any person with ten percent or greater interest in an applicant is required to be approved for licensure.

⁴ Machines approved by the Board prior to October 1, 2020 are not subject to these testing and approval requirements unless OLG requires it and so long as the machines can connect to the central accounting system.

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Act included in the fiscal year 2021 through fiscal year 2024 budget and financial plan.⁵ OLG expects that it can have the central accounting system procured and operationalized by June 30, 2021 in order to provide the required 90 days' notice that machines must be connected so that every machine can be connected by the start of fiscal year 2022.

The tax burden change will ease administration of the ten percent game of skill gross game revenue tax and there are no costs associated with this change. Tax collections will be deposited into the District's Local Fund.

⁵ See Fiscal Impact Statement for Subtitle VI(C) of the Fiscal Year 2021 Budget Support Act of 2020, http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/FIS%2023-760%20Fiscal%20Year%202021%20Budget%20Support%20Act%20of%202020.pdf