

2011 SENATE FINANCE AND TAXATION

SB 2042

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2042
1/19/2011
Job Number 13064

☐ Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to consolidation of gaming taxes and allowable expenses

Minutes:

Written Testimony Attached

Chairman Cook opened the hearing on SB 2042.

Vonette Richter, Legislative Council: I staff the interim Judiciary Committee. I've been with the Legislative Council for 17 years and I've never appeared before Senate Finance and Tax before so this is a new experience for me. What I handed out (attachment A) is the portion of the final report from the Judiciary Committee that discussed this bill. It gives you some background on what led up to the committees' decision to recommend this bill. I will go through the bill section by section. The committee had a study of charitable gaming and did a fairly comprehensive study of a number of elements, including the tax rates and the allowable expenses. SB 2042 amends several sections in 5306.1, which is our charitable gaming chapter. Beginning with section 1 of the bill, you can see the definition of adjusted gross proceeds, excise taxes on bingo cards and pull tabs is over struck, because as you will see later in the bill, this bill would eliminate that excise tax. Section 2 changes the expense limit from a sliding scale based upon adjusted gross proceeds to a flat expense limit of 60%. Section 3 of the bill deals with the tax rates on charitable gaming and as you can see a similar process took place here. There was varying rates depending on adjusted gross proceeds. This bill would set a flat rate of 1% on gross proceeds for all gaming taxes. The final change is on the bottom of the page line 29. There is an amount that the Attorney General puts in to a fund called the gaming and excise tax allocation fund, which is paid back to the local governments for enforcement purposes. Because of the adjustment that was made in the tax rate to 1%, to keep that same amount being returned to the local entities, that percent was changed from 3% to 10%. That is to keep that at the same amount that is currently paid to those entities.

Chairman Cook –This study was only on charitable and paramutual racing and had nothing to do with any other forms of gambling in the state as far as tax revenue.

Vonette Richter, Legislative Council – That is correct, and it did not address the lottery.

Senator Triplett – Was there general consensus among the committee about the different charitable groups that this was a reasonable way to go?

Vonette Richter, Legislative Council – The committee first looked at a bill that would have set the tax rate at 3.16% which would have been revenue neutral. The state would have still collected about the same amount; however, it would have simplified the tax process. I believe the testimony indicated that about 80% of the charities would have paid less tax under that method and about 20% would have paid more. So there was opposition to that plan. Then the bill was amended to this 1% flat tax. I don't recall that we had any opposition to it at that point.

Marvin Knutson, Vice President, Charitable Gaming Association – (See attached testimony B and B1 in support of SB 2042)

Ken Karls, Cystic Fibrosis Association of North Dakota - (See attached testimony C in support of SB 2042)

Karen Breiner, Gaming Manager, Plains Art Museum - (See attached testimony D in support of SB 2042)

Chairman Cook asked for testimony opposed to SB 2042. No one came forward.
Chairman Cook asked for neutral testimony for SB 2042.

Keith Lauer, Director, Gaming Division for the Attorney General's Office - (See attached testimony E neutral on SB 2042 and proposed amendment E1 for SB 2042)

Senator Dotzenrod – If we could go back to the original intent and the original structure, what kind of tax rate would it take today to give us revenues that would be comparable to what we would have gotten had the original structure of this gaming tax stayed in place? That number turned out to be about 1%. When that became clear to the committee, I think there was a movement there to move toward trying to get us back to a structure that was free from the urgency of the state to get as much money as it could from any place it could. I think that really was a big influence on the interim committee. If the state is no longer in that position of having to take money away from charities, essentially, then we should try to get back there.

Senator Hogue – Can you describe the allowable expenses concept? I don't see it in the statute. I was wondering if that's an Attorney General definition and if your reports describe what you receive from the organizations. Do they describe the expenses that they are incurring in terms of the percentage that is driven by labor, office expense, and other dollars that they need to spend to operate as an organization?

Keith Lauer, Director, Gaming Division for the Attorney General's Office – The explanation of the allowable expenses is actually on page 1 line 20. The charities of that expense money is used for buying pull tabs, paying for gaming staff, buying 21 tables, paying for video surveillance, etc. The organizations give us the amount that they are spending for all of their gaming related expenses on a tax return. They don't get specific about what those expenses are unless they are trying to claim the Subsection C where there is an additional 2% that's allowed. That's the only time they would give us an actual breakdown on the tax return of exactly what all their expenses are.

Senator Hogue – But where do I go if I wanted to know what allowable expenses mean? Subsection 2 says allowable expenses may be deducted from adjusted gross proceeds. I know what adjusted gross proceeds are, but what's allowable expenses?

Keith Lauer, Director, Gaming Division for the Attorney General's Office – I guess I misunderstood your question. You are asking how the charity or the Attorney General decides what those expenses are. They are all gaming related expenses. Anything that has to do with operation of the gaming would be an allowable expense.

No further action was taken.

Chairman Cook closed the hearing on SB 2042.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2042
2/1/2011
Job Number 13752

☐ Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to consolidation of gaming taxes and allowable expenses

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2042.

Chairman Cook – This bill has an \$11 million fiscal note. The gaming tax bill. Are we ready to take action on this bill?

Vice Chairman Miller – I move the amendments from the tax department.

Seconded by **Senator Burckhard**.

Chairman Cook – All in favor say yea. Opposed? (7-0-0) We have before us SB 2042 as amended.

Vice Chairman Miller motioned Do Pass as Amended and rerefer to Appropriations.

Seconded by **Senator Dotzenrod**.

Vice Chairman Miller – It's got a hefty fiscal note but maybe we can send it over to Appropriations and let them deal with it for a while. I think the principal of the bill has merit and I generally support a lot of charitable organizations in our state. So that is why I move the do pass.

Senator Triplett stated that she agrees with that because although a hefty fiscal note, these organizations take some burden off the state that would otherwise be needed.

Senator Dotzenrod – Add that he thinks people don't realize how heavily gaming is taxed.

Chairman Cook – Ask the clerk to take the roll. (6-1-0)

Carried by **Vice Chairman Miller**.

FISCAL NOTE
Requested by Legislative Council
04/22/2011

Amendment to: Engrossed
SB 2042

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$6,796,723)		(\$6,796,723)	
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill reduces the gaming and excise taxes paid by charitable gaming organizations. There are 4 tax rates, ranging from 1% to 2.5% depending on each organization's gross proceeds.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Assuming no change in gross wagers, the proposed tax rates on gross wagers would reduce the total general fund taxes collected from the charitable gaming industry by \$6.8 million, from \$15.8 to \$9 million for the 2011-13 and the 2013-15 bienniums.

The gaming tax payback to cities and counties would be changed to 6 percent which should maintain the same payback amount.

The increase in allowable expenses, from 51% to 60% of adjusted gross proceeds would have no fiscal impact on this bill because the gaming tax is based on gross wagers.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Assuming no change in gross wagers, the tax change on gross proceeds would reduce the total general fund taxes collected from the charitable gaming industry by \$6.8 million for the 2011-13 and 2013-15 bienniums.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The gaming tax payback to cities and counties should remain at the current level of \$510,000, which is appropriated for the 2009-11 and 2011-13 biennia.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency*

and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

Currently \$510,000 is appropriated for the 2009-11 and 2011-13 biennia for the gaming tax payback to cities and counties.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	701-328-3622	Date Prepared:	04/22/2011

FISCAL NOTE
Requested by Legislative Council
04/16/2011

Amendment to: Engrossed
SB 2042

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$6,758,230)		(\$10,800,000)	
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill reduces the gaming and excise taxes paid by charitable gaming organizations to 1% of gross proceeds effective January 1, 2012, which would result in a \$6.7 million general fund revenue reduction for the 2011-13 biennium and \$10.8 million reduction for the 2013-15 biennium.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Assuming no change in gross wagers, a 1% tax on gross wagers would reduce the total general fund taxes collected from the charitable gaming industry by \$6.7 million, from \$15.8 to \$9.1 million for the 2011-13 biennium and by \$10.8 million for the 2013-15 biennium.

The gaming tax payback to cities and counties will be changed to 10% effective January 1, 2012, which should maintain the same payback amount.

The increase in allowable expenses, from 51% to 60% of adjusted gross proceeds would have no fiscal impact on this bill because the gaming tax is based on gross wagers.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Assuming no change in gross wagers, a 1% tax on gross proceeds would reduce the total general fund taxes collected from the charitable gaming industry by \$6.7 million for the next biennium, from \$15.8 to \$9.1 million for the 2011-13 biennium and by \$10.8 million for the 2013-15 biennium.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The gaming tax payback to cities and counties should remain at the current level of \$510,000, which is appropriated for the 2009-11 and 2011-13 biennia.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Currently \$510,000 is appropriated for the 2009-11 and 2011-13 biennia for the gaming tax payback to cities and counties.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	701-328-3622	Date Prepared:	04/18/2011

FISCAL NOTE
Requested by Legislative Council
03/24/2011

Amendment to: Engrossed
SB 2042

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$5,800,000)		(\$5,800,000)	
Expenditures				(\$10,000)		(\$10,000)
Appropriations				(\$10,000)		(\$10,000)

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill reduces the gaming and excise taxes paid by charitable gaming organizations, which would result in a \$5.8 million general fund revenue reduction. It also would reduce the amount paid to cities and counties by \$10,000 in other funds as a result of this tax change.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Assuming no change in gross wagers, a 2% tax on gross wagers would reduce the total general fund taxes collected from the charitable gaming industry by \$5.8 million, from \$15.8 to \$10 million (\$500,000,000 gross wager x 2%) for the 2011-13 and 2013-15 biennia. The gaming and excise tax reduction reflected in Section 3 on page 3 of the bill would reduce by \$10,000 the amount paid to cities and counties for gaming enforcement, even with the gaming and excise tax payback rate increase from 3% to 5% of the amount of the taxes collected. The current tax payback is \$510,000 per biennium.

Based on current gaming and excise taxes paid by the charitable gaming organizations, the tax rate on gross wagers as outlined in Section 3 (page 3) of this bill would need to be 3.16% to bring in the current \$15.8 million in taxes per biennium on \$500,000,000 of gross wagers.

The increase in allowable expenses, from 51% to 60% on the first \$200,000 in adjusted gross proceeds and 45% over \$200,000 in adjusted gross proceeds, would have no fiscal impact on this bill because the tax is based on gross wagers.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Assuming no change in gross wagers, a 2% tax on gross wagers would reduce the total general fund taxes collected from the charitable gaming industry by \$5.8 million for the next biennium, from \$15.8 to \$10 million (\$500,000,000 gross wagers x 2%) for both the 2011-13 and 2013-15 biennia.

Based on current gaming and excise taxes paid by the charitable gaming organizations, the tax rate on gross wagers

as outlined in Section 3 (page 3) of this bill would need to be 3.16% to bring in the current \$15.8 million in taxes per biennium on \$500,000,000 of gross wagers.

The increase in allowable expenses, from 51% to 60% on the first \$200,000 of adjusted gross proceeds and 45% over \$200,000 of adjusted gross proceeds, would have no fiscal impact because the tax is based on gross wagers.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Other funds expenditures, paid to cities and counties for gaming enforcement, would be reduced by \$10,000 for the 2011-13 and 2013-15 biennia as a result of the gaming and excise tax reduction reflected in Section 3 on page 3 of the bill even with the gaming and excise tax payback rate increase from 3% to 5% of the amount of the taxes collected. Currently \$510,000 is appropriated for the 2009-11 and 2011-13 biennia.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Other funds expenditures, paid to cities and counties for gaming enforcement, would be reduced by \$10,000 for the 2011-13 and 2013-15 biennia as a result of the gaming and excise tax reduction reflected in Section 3 on page 3 of the bill even with the gaming and excise tax payback rate increase from 3% to 5% of the amount of the taxes collected. Currently \$510,000 is appropriated for the 2009-11 and 2011-13 biennia.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	03/24/2011

FISCAL NOTE

Requested by Legislative Council
02/03/2011

Amendment to: SB 2042

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$10,800,000)		(\$10,800,000)	
Expenditures				(\$10,000)		(\$10,000)
Appropriations				(\$10,000)		(\$10,000)

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill significantly would reduce the gaming and excise taxes paid by charitable gaming organizations, which would result in a \$10.8 million general fund revenue reduction. It also would reduce the amount paid to cities and counties by \$10,000 in other funds as a result of this tax change.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Assuming no change in gross wagers, a 1% tax on gross wagers would reduce the total general fund taxes collected from the charitable gaming industry by \$10.8 million, from \$15.8 to \$5 million (\$500,000,000 gross wager x 1%) for the 2011-13 and 2013-15 biennia. The significant gaming and excise tax reduction reflected in Section 1 on page 3 of the bill would reduce by \$10,000 the amount paid to cities and counties for gaming enforcement, even with the gaming and excise tax payback rate increase from 3% to 10% of the amount of the taxes collected. The current tax payback is \$510,000 per biennium.

Based on current gaming and excise taxes paid by the charitable gaming organizations, the tax rate on gross wagers as outlined in Section 3 (page 3) of this bill would need to be 3.16% to bring in the current \$15.8 million in taxes per biennium on \$250,000,000 of wagers each year.

The increase in allowable expenses, from 51% to 60% on the first \$200,000 in adjusted gross proceeds and 45% over \$200,000 in adjusted gross proceeds, would have no fiscal impact on this bill because the tax is currently based on gross wagers.

The amendment adding gaming tax to the

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Assuming no change in gross wagers, a 1% tax on gross wagers would reduce the total general fund taxes collected from the charitable gaming industry by \$10.8 million for the next biennium, from \$15.8 to \$5 million (\$500,000,000 gross wager x 1%) for the 2011-13 and 2013-15 biennia.

Based on current gaming and excise taxes paid by the charitable gaming organizations, the tax rate on gross wagers as outlined in Section 3 (page 3) of this bill would need to be 3.16% to bring in the current \$15.8 million in taxes per biennium on \$250,000,000 of wagers each year.

The increase in allowable expenses, from 51% to 60% on the first \$200,000 of adjusted gross proceeds and 45% over \$200,000 of adjusted gross proceeds, would have no fiscal impact because the tax is currently based on gross wagers.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Other funds expenditures would be reduced by \$10,000 for the 2011-13 and 2013-15 biennia. The significant gaming and excise tax reduction reflected in Section 1 on page 3 of the bill would reduce by \$10,000 the amount paid to cities and counties for gaming enforcement, even with the gaming and excise tax payback rate increase from 3% to 10% of the amount of the taxes collected. Currently \$510,000 is appropriated for the 2009-11 and 2011-13 biennia.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Other funds appropriations would be reduced by \$10,000 for the 2011-13 and 2013-15 biennia. The significant gaming and excise tax reduction reflected in Section 1 on page 3 of the bill would reduce by \$10,000 the amount paid to cities and counties for gaming enforcement, even with the gaming and excise tax payback rate increase from 3% to 10% of the amount of the taxes collected. Currently \$510,000 is appropriated for the 2009-11 and 2011-13 biennia.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	02/04/2011

FISCAL NOTE

Requested by Legislative Council
12/16/2010

Bill/Resolution No.: SB 2042

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$10,800,000)		(\$10,800,000)	
Expenditures				(\$10,000)		(\$10,000)
Appropriations				(\$10,000)		(\$10,000)

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill significantly would reduce the gaming and excise taxes paid by charitable gaming organizations, which would result in a \$10.8 million general fund revenue reduction. It also would reduce the amount paid to cities and counties by \$10,000 in other funds as a result of this tax change.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Assuming no change in gross wagers, a 1% tax on gross wagers would reduce the total general fund taxes collected from the charitable gaming industry by \$10.8 million, from \$15.8 to \$5 million (\$500,000,000 gross wager x 1%) for the 2011-13 and 2013-15 biennia. The significant gaming and excise tax reduction reflected in Section 1 on page 3 of the bill would reduce by \$10,000 the amount paid to cities and counties for gaming enforcement, even with the gaming and excise tax payback rate increase from 3% to 10% of the amount of the taxes collected. The current tax payback is \$510,000 per biennium.

Based on current gaming and excise taxes paid by the charitable gaming organizations, the tax rate on gross wagers as outlined in Section 3 (page 3) of this bill would need to be 3.16% to bring in the current \$15.8 million in taxes per biennium on \$250,000,000 of wagers each year.

The increase in allowable expenses, from 51% to 60% on the first \$200,000 in adjusted gross proceeds and 45% over \$200,000 in adjusted gross proceeds, would have no fiscal impact on this bill because the tax is currently based on gross wagers.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Assuming no change in gross wagers, a 1% tax on gross wagers would reduce the total general fund taxes collected from the charitable gaming industry by \$10.8 million for the next biennium, from \$15.8 to \$5 million (\$500,000,000 gross wager x 1%) for the 2011-13 and 2013-15 biennia.

Based on current gaming and excise taxes paid by the charitable gaming organizations, the tax rate on gross wagers as outlined in Section 3 (page 3) of this bill would need to be 3.16% to bring in the current \$15.8 million in taxes per biennium on \$250,000,000 of wagers each year.

The increase in allowable expenses, from 51% to 60% on the first \$200,000 of adjusted gross proceeds and 45% over \$200,000 of adjusted gross proceeds, would have no fiscal impact because the tax is currently based on gross wagers.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Other funds expenditures would be reduced by \$10,000 for the 2011-13 and 2013-15 biennia. The significant gaming and excise tax reduction reflected in Section 1 on page 3 of the bill would reduce by \$10,000 the amount paid to cities and counties for gaming enforcement, even with the gaming and excise tax payback rate increase from 3% to 10% of the amount of the taxes collected. Currently \$510,000 is appropriated for the 2009-11 and 2011-13 biennia.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Other funds appropriations would be reduced by \$10,000 for the 2011-13 and 2013-15 biennia. The significant gaming and excise tax reduction reflected in Section 1 on page 3 of the bill would reduce by \$10,000 the amount paid to cities and counties for gaming enforcement, even with the gaming and excise tax payback rate increase from 3% to 10% of the amount of the taxes collected. Currently \$510,000 is appropriated for the 2009-11 and 2011-13 biennia.

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	01/11/2011

E1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2042

Page 1, line 8, after the comma insert "gaming tax."

Renumber accordingly

Date: 2-1-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2042

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			Jim Dotzenrod		
Joe Miller – Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal vote

11.0252.02001
Title.03000

Adopted by the Finance and Taxation
Committee

February 1, 2011



PROPOSED AMENDMENTS TO SENATE BILL NO. 2042

Page 1, line 8, after the second overstruck comma insert "gaming tax."

Renumber accordingly

2-2-11

Date: 2-1-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2042

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	X		Jim Dotzenrod	X	
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue		X			
Dave Oehlke	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Miller

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2042: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2042 was placed on the Sixth order on the calendar.

Page 1, line 8, after the second overstruck comma insert "gaming tax."

Renumber accordingly

2011 SENATE APPROPRIATIONS

SB 2042

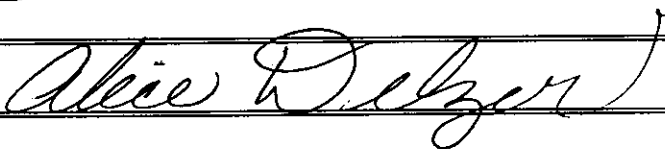
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2042
02-08-2011
Job # 14200

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL relating to consolidation of gaming taxes and allowable expenses

Minutes:

#1,#2,#3,#4,#5,#6,#7

See attached testimony.

Chairman Holmberg called the committee to order on Tuesday, February 8, 2011 at 10:00 am in reference to SB B 2042. Sheila Peterson, OMB and Becky J. Keller, Legislative Council were present.

Vonnette Richter with Legislative Council; product of Interim Judiciary Committee. Testified in favor of SB 2042 and Testimony attached # 1. Report introduced the bill gaming taxes and allowable expenses for charitable gaming. It has two primary purposes: 1.) It simplifies the allowable expenses to one flat rate of 60% rather than a graduated expense limit based on adjusted gross proceeds; 2.) It simplifies the tax structure. It eliminates excise tax and provides for one flat rate of 1% on gross proceeds for gaming. 3.) Currently, there is 3% that is deposited into an account that goes back to the locals for enforcement purposes because of the decrease in the tax amount. That amount was increased from 3% to 10% so that the same amount would be returned to the local entities. Regarding the impact, I have some numbers for you. Essentially based on what's in place right now, there is about a tax percent of 3.16% this bill would take that to 1%. Currently there is about \$15.4 Million in gaming taxes collected per biennium. The result of this bill would reduce that to about \$5 M per biennium. The Interim information also indicated that the Gaming Divisions expenses are about \$1.8 M per biennium. The discussion in the interim committee was to return more money to the charities still be able to cover the expenses either through the Attorney Generals' office and this would still be more, about 2 ½ times what the Attorney Generals' office uses for their enforcement expenses.

Chairman Holmberg: And over time, we have always talked when gaming came in that we would use the money for enforcement and those kinds of things. But we really have used it for general fund stuff.

Senator Miller: Taxation committee believes that charitable gaming is good for North Dakota. It provides a lot of money towards charities that use it within their communities and we felt this was a reasonable amount of money to put back into our local communities, charities, and organizations of that nature. They need money to operate and they get a large portion of their

money from charitable gaming. We felt very strongly that this was a good move by the state to give this tax cut.

Marvin Knutson, Vice President of the Charitable Gaming Association of ND (CGAND) testified in favor of SB 2042 and Testimony attached # 2. He stated the members of CGAND are not against paying taxes, but the ratio of taxes to money left for charitable requests is way out of line with other ND industries. We are asking for a DO PASS in SB 2042. (10.39)

V. Chair Bowman: It seems we tried to adjust this 2 years ago. Did that make any difference in the bottom line or are people not playing the games as much right now as they use too?

Marvin Knutson: Yes, I did not testify last session, but the numbers were bounced around quite a bit and I remember a 2% being mentioned and a 3% and a ½ %, finally it was settled on our current rate which is just over the 3% figure the way the formula is worked. Yes, we did get a reduction in our taxes, and of course this all helped but these last two years since that time, our own personal business at Milner, ND, has decreased by nearly 30%. So therefore, we are seeing a real difference in available money for charitable requests.

V. Chair Grindberg: I recognize there is probably a lot of diversity in how various charities operate, I am interested in your case. Do you have any long term debt from years ago that is being challenged by decreased collections?

Marvin Knutson: No, We're very fortunate. Our organization was formed about 25 years ago as an organization to help extra- curricular activities at the school. Through collecting dues and various fund raisers they did this kind of a program until we started into the gaming business about 12 years ago. Our only debt at the time was to buy the ticket dispensing machines which were paid off fairly fast. We are in a position to operate, but the thing that has become so apparent to us is the costs at the swimming pool, community center, kids on field trips all of those things have gone up and our money that is available to help pay for that has gone down. This is the thing that we need help on by this tax reduction.

Dianne Sheppard, Executive Director for The ARC, Upper Valley in Grand Forks testified in favor of SB 2042 and Testimony attached # 3. Our mission is to ensure that children and adults with an intellectual disability have the supports, benefits, and services they need and are accepted, respected and fully included in their communities. Charitable gaming has been an important funding source for our programs and services for the past 28 years. Our organization will benefit from the 1% flat tax on gross proceeds. It will give us an additional \$10,000 a year. To help the smaller organizations I would encourage you to keep that flat tax at 1%.

Ken Karls, Cystic Fibrosis Association of North Dakota in Bismarck. Testified in favor of SB 2042 Testimony attached # 4. He stated his organization needs to operate because we provide financial, educational and emotional support for North Dakota families who have members with cystic fibrosis. We need that money in net proceeds and in the expense allowance and we need the tax cut. However, I was more in favor of the bill as it was originally introduced to Senate Finance and Tax. I didn't put a pencil to the change necessitated by the amendment that was put on by Finance and Tax, until this week. I have 54.62% of the tax reduction revenue actually goes up in smoke the minute you include the gaming tax in the

definition of the adjusted gross proceeds. So if you're looking at actually improving the financial condition of the charities, you want to do that by giving them as much money as you possibly can. That \$66,679 that I have there is indeed our tax cut. That is what we would realize, had this been in effect. However, \$36,500 goes up in smoke because you have to subtract it from our adjusted gross proceeds. The reason that is important is both expenses and net proceeds transfer are a product of the adjusted gross proceeds. So when that number goes down, so does the numbers of those other two net proceeds and expenses. Now, the way it was originally introduced, would've left the tax out of the definition of adjusted gross proceeds, and indeed that would've given us all that revenue. Testimony attached #5. It will shows you the effect of the original introduced bill. I talked to the Attorney General's gaming division about this amendment. As I understood it, this was introduced because there were certain larger charities who, they were concerned about getting too many excess allowable expenses. Cystic Fibrosis Association has some 6 gaming sites in Bismarck/Mandan. Each one of them has Blackjack which means it is very labor intensive. So our expenses are higher than a charity that would have example cited. We have to watch our expense dollars very closely. See attached Testimony #5. 58.58% of the tax cut would have gone to allowable expenses and 41.42% would have gone to the net proceeds transfer. Referring to the first handout, you can see what happens as a result of moving the tax into the definition of adjusted gross proceeds. It drops both of those; we only end up even though \$66,679 is there. Only about 41% of those dollars of that revenue actually becomes available to us. I would've tried to get this taken care of in Finance and Tax committee. If it's up to whether or not you pass this bill or don't pass it, please pass this bill. To pay \$66,000 less to the state of North Dakota is a good thing for us.

Chairman Holmberg: You understand the dilemma that committee focuses on what is the impact on to the general fund or on to taxes etc, and the policy committee has made those changes. Don't throw away your other handouts in your testimony, because if the bill passes, then you get a shot at a policy committee in the House.

V. Chair Bowman: Is the total gaming proceeds going down?

Ken Karls: My charities gaming proceeds have stayed level, they go down one year, they come up a little bit. From what they were 8 years, there are down significantly.

V. Chair Bowman: Does anyone know as a state, as a whole, how gaming is being affected by our strong economy out West? It seems to me like they would be doing fairly well right now and you want to give them all the benefits of all of these influx of people that are making a lot of money.

Ken Karls: I cannot speak to those. I think possibly Mr. Lauer might be able to answer those questions for you.

Janelle Mitzel, Employed by Developmental Homes in Grand Forks: We provide community based support services for people with disabilities. She testified in favor of SB 2042 Testimony attached # 6). We provide special needs and also specialized training for those in the group homes. Our gaming trust revenue is very important to our organization. The tax liabilities far exceeded our net profits for our organization.

Arlette Preston, Member of Fargo Plains Art Museum Board of Directors. Testified in favor of SB 2042 and Testimony attached # 7. She is representing the Fargo Plains Art Museum and has seen a decrease in revenue coming over to the museum side. We have cut staff, programming, and the services that they been able to deliver and we're really to the point where we're feeling like we can't cut any further or we'll truly sacrifice the mission of the organization.

Chairman Holmberg: Interesting aspects of your testimony was the last part, where you mentioned that you received from charitable gaming \$194,000 but at the same time you've paid in additional \$165,000 to the state. That is quite a big percentage of income that went to us so we could turn around and give it back to you?

V. Chair Bowman: One of the speakers previously talked about all the different groups that they support. Well when you first started the charitable gaming, was it for one or two or three specific purposes and have they expanded out to more specific purposes, which actually lowers the amount of money that they can get if revenue stays the same. The margin would be spread out over the others and decrease the amount of profit that you would get. How does this work?

Karen Breiner, Gaming Manager for the Plains Art Museum: If more organizations come into one charitable gaming the pie gets split so much that everyone loses. That could be a factor, but the reduction in the amount of gaming organizations and sites has not decreased significantly especially in our region. I think the amount of sites in the city of Fargo is pretty stable. Across the state, I am sure that Keith Lauer from the AG office could speak on that.

V. Chair Bowman: It's pretty stable as far as the gaming sites are concerned, and the revenues fluctuate a little. My point was and I am asking anyone to answer this, is that when you have a gaming site, and different groups want to come in and receive part of this for their charitable organization, and if too many come in, that spreads that pie a little thin for the ones that were there to begin with. So, consequently, you have to offset that by a reduction in taxes in order to try and get back to where you were to begin with. Is that a fair analysis of this?

Karen Breiner: I would say so. Again, I am hoping that Keith would probably be able to enlighten us a little further on that question.

Marvin Knutson: The thing I confused you on Arlette's and Karen's testimony. They are talking of an organization with a prime goal, and that they sponsor. The Bison Booster Club of Milnor, North Dakota, retains the gaming rights for the City of Milnor. We operate actually at four locations. All of the money comes into the Bison Booster Club where our Board of Directors divide up the charitable trust money based on the requests we get from everybody in our community. I mentioned a few of the things we financed but it is per request. It isn't that we're dividing the money between groups, of organizations, it is just the total amount of money that we have available to pay any requests from anybody.

V. Chair Bowman: It gives me a better idea.

Diane Sheppard: One of my concerns for the last 20 years is charitable gaming in North Dakota should be good for all charities that want to get into charitable gaming. My concern is

that if something isn't done to prop up these small rural ambulances, etc, that charitable gaming will boil down to the top six or ten organizations in the state. I don't think that is what we want. Charitable gaming is here for all size organizations if they want to get in. That's how I interpreted your question.

Keith Lauer, Director of the Gaming Division for the Attorney General's Office. Our office is neutral. Testimony attached # 8. I've passed out a history of the gaming taxes since 1977 when charitable gaming was first introduced in the state of North Dakota. Basically what this bill does, it returns the tax rate to approximately what it was back in the early 1980's when there was a 5% on adjusted gross. Because when we looked at this in the interim committee, keep in mind our office is neutral on this, this is a policy matter by the Legislature, but this certainly would save our office some time and effort because right now there are 3 separate taxes, and you will see on the handout, the underlined taxes are the current taxes that are being paid, by the charitable gaming industry. One was done in 1989, where the gaming tax was a 5 to 20% graduated tax, and that is based on adjusted gross per quarter, and then in 2007, when the sales tax was reduced on bingo cards, it was replaced with a 3% excise tax on gross sales of bingo cards. Last session the 4.5% excise tax on pull tabs was reduced to 3%. So we have actually three different gaming taxes we're talking about. This bill would consolidate them into one tax. When the bill was original it was at 3.16% which is the average that all charities are currently paying across the board. But it was reduced to 1% to bring it back into what the charities were paying back in the early 1980s. And then the allowable expenses; there is four different calculations for allowable expenses. This removes those four different calculations and has one 60% allowable expense for all charities across the board. This would make our job easier, although the tax matter of how much you want to collect is certainly up to you.

V. Chair Grindberg: Can we get a historical following the annual transactions in the industry that maybe goes back to two biennium's?

Keith Lauer: Yes, as far as in the amount of wagering?

V.Chair Grindberg: So, we can see the trends, I hear it is going down and down.

Keith Lauer: The highest that charitable gaming ever did was about \$300 Million wagered and that was back in the early 1990's. The most recent fiscal year was about \$250 Million wagered. So we've had about, over the years its gone up and down, but we've kind of stabilized at about a quarter of a billion dollars wagered every year in charitable gaming. Now, that is certainly down a little bit from two years ago. What we're seeing in places like Fargo where they've implemented some smoking bans, you will see a slight decrease in the amount of wagering but it will be made up in the west where there's oil production and you've got additional wagering going on. State wide, we haven't seen a lot of fluctuations. I can get you some numbers from the last two bienniums. He was told to just email the numbers back to him.

Chairman Holmberg: To get the fuller picture, you're saying \$250- \$300 M in wagering in charitable gambling. Do you know off hand how much the state run lottery, how much is wagered on that over the same kind of period? Is that \$100M, I have no idea what it is.

Keith Lauer: I know what the taxes are from it. The first fiscal year in 2005 about \$19 M was wagered in the lottery. In 2006 it was \$22M, in 2007 it was about \$22M, it has been that \$22 M dollars for the last 4 fiscal years. We have not seen a decline in charitable gaming just because of the lottery though, in fact the first year of operation of the lottery charitable gaming had actually gone up.

Senator Robinson: What impact has the casinos both in and out of state have on local charitable gaming?

Keith Lauer: It certainly had an impact. People that used to go to bingo halls a lot will now go down to the casinos.

Senator Robinson: Given the nature of those establishments, we don't have any idea what type of volume they are doing, do we? He was told that is confidential information.

Senator Wanzek: Can we the state spend the money better or can the charities spend it wiser? That's the question before us, right?

Keith Lauer: I think that is a fair assessment. When we came in to look at this during the 2 year study; it was what can be done to simplify the process. Now it's a matter of coming down to does the state spend the money better or do we give it to the charities and allow them to spend it?

Senator Christmann: The fiscal note says that if this was 3.16% instead of 1% that would make it revenue neutral to the state.

Keith Lauer: That is correct. That is currently what all the charities are paying now. This particular bill provides tax relief to every single charity in the state of North Dakota. If you were to bring it at 3.16% about half, probably 2/3 of the charities would get a tax break and the third would get actually get a tax increase. Because you're shifting that now, depending on what kinds of games types they play. Excise taxes are paid on bingo and pull tabs, where the gaming tax is paid on all game types. By shifting this up, from like a 1% you're going to in some cases, you're going to start taxing some charities higher than what they are currently are paying.

Senator Christmann: What's Mr. Lauer's feel for where would the numbers be where you had first start to negatively impact someone if you made the other changes but were just altering that percentage?

Keith Lauer: Every half percent of increase brings in \$2.5M dollars of additional tax per biennium. If you brought this up to a 2% instead of 1%, there is about 12 to 15 organizations that would actually have a tax increase. At about 1.5% , I don't think, you may have only 1 or 2. There is some slight movement that can be done, but you start getting up to 2% or 3% and you're definitely going to be negatively affecting some organizations. The charities were paying enough in one quarter to pay for all the regulation for the entire biennium. The other seven quarters we're going to the general fund. Even at this rate at 1% you've got twice the money that you need for regulation. It is a policy matter.

Senator Christmann: None of this was calculated into the Governors budget. This isn't a Governor's recommendation. This is a legislative?

Sheila Peterson, OMB: That is correct. That came out of an interim committee and there is no change in the Governors budget.

V. Chair Grindberg: I had a conversation with the OMB in the Governor's office prior to this session encouraging them to factor that in. There was a lot of input.

Chairman Holmberg closed the hearing on SB 2042.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2042
February 18, 2011
Job # 14729 (Meter 12:24)

☐ Conference Committee

Committee Clerk Signature

Rose Lanning

Explanation or reason for introduction of bill/resolution:

A committee vote on SB 2042 – gaming tax and allowable expenses

Minutes:

You may make reference to "attached testimony."

Senator Wardner: We took a look at the \$10.8M cut in revenue and we were looking to cut that down and cut it in half. If you cut it in half, there are 25 entities that end up costing money. After you get it to a place where they would make some, those 25 would still be – it would help them some. It is my opinion that we need to leave this bill alone and go with it the way it is. This is money that stays in the community and goes right to services. There's not a lot of administration or anything and it goes right to helping people.

Senator Wardner moved Do Pass. 2042
Senator Warner seconded.

A Roll Call vote was taken. Yea: 11 Nay: 2 Absent: 0
Goes to back to Finance & Taxation and Senator Miller will carry the bill.

Date: 2-18-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2042

Senate Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Wardner Seconded By Warner

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman		✓	Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann		✓			
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 11 No 2

Absent 0

Floor Assignment Finance & Tax Miller

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2042, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2042 was placed on the Eleventh order on the calendar.

2011 HOUSE FINANCE AND TAXATION

SB 2042

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2042
March 14, 2011
#15405

☐ Conference Committee

Committee Clerk Signature

Mary Bruckey

Explanation or reason for introduction of bill/resolution:

A bill relating to consolidation of gaming taxes and allowable expenses.

Minutes:

No attachments.

Chairman Wesley R. Belter: It has a \$10.8 million fiscal note on it. I am certainly not going to support that type of tax reduction. Does anybody want to join Owens and Grande to work on SB 2042? This would be a subcommittee. We have Owens, Grande, and Kelsh to work on SB 2042/

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2042
March 9, 2011
#15169

☐ Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to consolidation of gaming taxes and allowable expenses.

Minutes:

See attached testimony #1, #2, #3, #4, #5, and #6.

Dianne Sheppard, ARC of Grand Forks: Support. I would like to email you the written testimony. I would like to make two points on the bill as it is currently written; the game of 21 has never been taxed before so for organizations that operate the game of 21 as the primary game type the flat tax of 1% cannot go higher or organizations like the ARC, Special Olympics, and a lot of your rural small organizations will not benefit from the bill or they could actually end up paying higher taxes. My point is to make this bill work for all levels of organizations that tax needs to remain at 1%. This bill will save us roughly \$10,000 a year.

Harvey Peterson, Commander of Harley Salzman American Legion Post #5: Support. Please refer to attached testimony #1.

Marvin Knutson, Vice-President of the Charitable Gaming Association of North Dakota: Support. Please refer to attached testimony #2.

Vonette Richter, Legislative Council: Introduced bill. Support. Please refer to attached testimony #3. I staffed the interim judiciary committee, the committee that recommended the bill you have before you. The committee was assigned a study to look at charitable gaming and horse racing in the state and this bill is one of the products of that committee. The first major change is in section 2 of the bill regarding allowable expenses. This change on line 22 would simplify the allowable expenses that can be deducted from adjusted gross proceeds to a flat rate of 60%. Currently there are different allowable expenses based on adjusted gross proceeds per quarter and then there are some additional expenses allowed to be deducted on the gross proceeds of pull tabs and expenditures for surveillance equipment. The second major change on this bill is in section 3. This would change the tax structure for charitable gaming from a sliding scale type of tax based on adjusted gross proceeds plus an excise tax on bingo and pull tabs to a flat rate of 1% on gross proceeds rather than adjusted gross. The third item I would like to point out to you is on page 4 line 1 which would change the amount of gaming taxes that are deposited in the tax allocation fund from 3% to 10% and this is the amount that is distributed quarterly to cities and

counties for gaming enforcement. The actual amount would not change but the percentages change based on the changes on the tax rate. The same amount would continue to be returned to the cities and counties.

Chairman Wesley R. Belter: The same dollar amount?

Vonette Richter: The same dollar amount. The information I distributed to you is a portion of the final report of the judiciary committee in which the committee discussed this issue.

Ken Karls, Cystic Fibrosis Association of North Dakota: Support. Please refer to attached testimony #4.

Representative Glen Froseth: What this does is reduce the taxation on the brackets of income on adjusted gross proceeds to a flat rate of 1% on whole gross proceeds, is that right?

Vonette Richter: That is correct.

Representative Glen Froseth: This includes the conversation we had on bingo cards from 3% to 1%. How about 21?

Vonette Richter: I believe so. Someone else could answer this question better than I can.

Keith Lauer, Director of the Gaming Division for the Attorney General's Office: Currently there are three taxes assessed against charitable gaming organizations. Diane Sheppard did make an error in saying that 21 was not taxed. Twenty one is taxed and it is taxed at a 5-20% of adjusted gross proceeds. There is an excise tax on bingo and pull tabs only at a 3% rate. We are consolidating those three taxes that are calculated separately into a single tax of 1% of gross in this bill.

Representative Glen Froseth: Inaudible.

Keith Lauer: All game types, raffles, sports pools, everything.

Representative Glen Froseth: Inaudible.

Keith Lauer: That is correct.

Chairman Wesley R. Belter: What is the tax on 21?

Keith Lauer: That is going to run from 5-20% for each \$200,000 of adjusted gross proceeds. I have a handout I can give you. Our office is neutral on this bill. We like the tax simplification part of it but as far as the income part we believe that is a legislative matter. I've put together a history of the gaming taxes since 1977 when charitable gaming was first implemented. The underlined portion of this will give you the taxes that currently exist for each game type.

Representative Shirley Meyer: This tax would be for the gross and not the adjusted gross?

Keith Lauer: That is correct. It's 1% of gross. We did a revenue neutral projection on this and the rate would have to be 3.16% to be revenue neutral to the state of North Dakota. For each 1/2 % increase in the rate you generate \$2.5 million of additional revenue to the state of North Dakota. On adjusted gross we would have had to have gone up to 15.6% to get that revenue neutral on an adjusted gross basis so that's why we went off of gross.

Representative Lonny B. Winrich: What is the cost or approximate cost of enforcing the gaming regulations?

Keith Lauer: Our current budget is just over \$2.5 million per biennium but now there is some assessment in there that is special funds. We also do the enforcement of the tribal casinos and they pay a direct cost of the enforcement in theirs so you'd have to take that out. The grant to the cities and counties is also in there so that includes that \$2.5. The \$2.5 might be a little low I think that's for the current biennium. I think it might be \$2.8 million for the next biennium of 2013 but that does include the enforcements to the cities of \$510,000 per biennium and about \$235,000 to the tribal casinos.

Representative Lonny B. Winrich: With this bill what would it bring in?

Keith Lauer: About \$5 million, about double.

Representative Glen Froseth: Will this affect the revenues for gambling addiction in the state?

Keith Lauer: There is an appropriation that is made out of the lottery budget that goes into compulsive gambling but this all goes into the general fund.

Chairman Wesley R. Belter: No further testimony. Closed hearing on SB 2042.

Representative Steven L. Zaiser: Distributed written testimony from Arlette Preston, member of the Fargo Plains Art Museum Board of Directors, testimony #6.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2042
March 22, 2011
#15800

☐ Conference Committee

Committee Clerk Signature

Mary Bruner

Explanation or reason for introduction of bill/resolution:

A bill relating to consolidation of gaming taxes and allowable expenses.

Minutes:

See attached amendments.

Representative Mark S. Owens: Distributed and reviewed amendments. Please refer to attached amendments. It changes the gaming tax from 1% to 2% and that reduces the fiscal note from its current level to \$5.8 million.

Representative Dave Weiler: What is the problem with this bill?

Representative Mark S. Owens: This is a continuation from doing away with smoking in bingo parlors and other locations. There has been a continual decline in the revenues by these nonprofits and charitable organizations from their charitable gaming. Once again they've come back for this to be lowered or adjusted because this has been happening every since the smoking bill passed. Somebody came up with this idea to simplify the whole thing rather than the sales tax and use tax and excise tax that we had before and just having a flat gaming tax based on the actual realized tax rate they were paying. In other words, by the time you figure out all the different taxes they were paying and their income and expenses and everything there was a realized tax rate of 6.4% or 3.2% or even in some cases 1.12% is what they were paying. This bill has been brought to simplify it to just a gaming tax on gross receipts of 1%. The only people we're hearing from on this is Fargo and Grand Forks. We've talked to them and so far they are in agreement with the 2%. That doesn't mean they won't be back for the 1% next session.

Vice Chairman Craig Headland: You had mentioned that there are current charities that are taxed below 2%, I think you said 1.something so they are going to have a net increase if this amendment and bill would pass.

Representative Mark S. Owens: That's correct. If the original bill passes there would be about eight that would have small increases because their actual taxable revenue was less than 1% and at 2% there is about 14 of them that would see a slight increase.

Representative Dwight Wrangham: You mentioned changing the allowable expenses. I imagine any organization that was paying that low of tax rate was very small and not involved in all forms of gaming because if they were involved in pull tabs their tax would have been higher than that no matter what their sales were, is that correct?

Representative Mark S. Owens: That's exactly what it was. The 8 and the 14 are the extremely small ones. The allowable expenses were on the original bill so it's not really part of the amendment. The bill raised it from 51% to 60% and this committee never discussed that nor sought to change it.

Representative Lonny B. Winrich: You said you went through the tax structure and the expenses and so on, could you elaborate on that a bit. My notes on the hearing indicate that even at the 1% would have generated twice as much revenue as needed to administer the program.

Representative Mark S. Owens: As you can well imagine right now it would generate more than enough to operate the program. When we met with the AG's office they brought out an excel sheet that based it on the realized tax rates that these people were paying from the highest to the lowest and that's where you could easily tell how many were at what percentage of their actual realized tax rate by the time you figured out all their expenses and gross proceeds and what they were paying in taxes compared to what money they got. That was all over the board from as high as 30 and 40 something percent to all the way down to less than 1% in some cases. It was explained to us that these are the very small operators and have a very small piece. If you also remember we were told that blackjack doesn't pay any tax and that turned out to be a falsehood, blackjack does pay tax. There was a misrepresentation during the testimony. That's also the reason why we took it from 10% to 5% was on page 4 that deals with the money used to administer the program. When it was at 1% it needed a bigger piece of the pie. It's budgeted on previous years at \$510,000 necessary a biennium to administer the program. Going from 10-5, 5 is only \$500,000 so we reduced the AG's by \$10,000 by doing this. That was just a matter of numbers because we didn't want to go 5.03 or something. Out of the money collected 5% has to be put away to administer. There is money left over to go to the general fund and now it would be \$5.3 million.

Representative Dave Weiler: On page 4 line 1 that fund is getting more money so what is losing money on that the general fund?

Representative Mark S. Owens: That fund has always taken a percentage of the monies collected in order to go into that fund for the enforcement of gaming. They raised it from 3 to 10% because they lowered the percentage of the tax. Since we're raising the percentage of the tax from 1 to 2 we are taking the \$10 to \$5 million.

Representative Dave Weiler: They've come to us to try and simplify their tax and make it a flat tax rate but yet their getting a \$10 million tax break on this thing. With his amendment it will be \$5.8 million.

Representative Mark S. Owens: That is correct. They were simplifying the tax rate and lowering it greatly to put more money into these charities which I have no problem with but

do we want to take a \$10 million bite all at once? So we came up with an amendment that reduces it by \$5 million and still allows for the administration of the program. I fully expect them back next session looking to go from 2 to 1% in which case we will actually take it but then the bite will only be \$2.5 million.

Representative Glen Froseth: On blackjack or 21 they pay anywhere from a 5 or 20% tax according to proceeds.

Representative Mark S. Owens: That's what this is simplifying. Now it's going to be 2% on the gross proceeds minus... It will include blackjack.

Representative Lonny B. Winrich: I want to respond to Representative Weiler's comment. I don't think the charitable gambling operation was initiated in this state to produce revenue. It was initiated to try and help the charities raise funds for their purposes. The state tries and supports the nonprofit charities around the state. The tax originally was intended to administer the program. It does far more than that. I think a tax reduction is appropriate.

Representative Dwight Wrangham: I'm not speaking against the bill but I have been contacted by some charitable organizations. There is an escalating tax rate and only the very largest organizations get hit with the highest tax rate. The largest organizations in the state are based out of Grand Forks.

Representative Mark S. Owens: I will move Representative Grande's amendment 03003 for SB 2042.

Representative Glen Froseth: Seconded.

A voice vote was taken: MOTION CARRIED.

Representative Shirley Meyer: I move a DO PASS AS AMENDED.

Representative Patrick Hatlestad: Seconded.

A roll call vote was taken: YES 10 NO 1 ABSENT 3
MOTION CARRIED FOR DO PASS AS AMENDED.

Representative Patrick Hatlestad will carry SB 2042.

VR
3/22/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2042

Page 3, line 23, replace "one" with "two"

Page 4, line 1, replace "ten" with "five"

Renumber accordingly

Date: 3-22-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2042

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
03003

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Owens Seconded By Rep. Froseth

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trottier					
Dave Weiler					
Dwight Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

VOICE VOTE

MOTION CARRIED.

Date: 3-22-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2042

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Meyer Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	AB		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande	AB		Steven L. Zaiser	AB	
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler		✓			
Dwight Wrangham	✓				

Total (Yes) 10 No 1

Absent 3

Floor Assignment Rep. Hatlestad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2042, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (10 YEAS, 1 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2042
was placed on the Sixth order on the calendar.

Page 3, line 23, replace "one" with "two"

Page 4, line 1, replace "ten" with "five"

Renumber accordingly

2011 SENATE FINANCE AND TAXATION

CONFERENCE COMMITTEE

SB 2042

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2042
4/8/2011
Job Number 16440

☒ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Relating to consolidation of gaming taxes and allowable expenses

Minutes:

Conference Committee

Senator Miller opened discussion on SB 2042.

Senator Miller – The bill passed the Senate with a 1% tax and the House raised that to 2%.

Representative Owens – What happened in the House was, this was literally looking at the fiscal note and it was best to reduce to, the way the bill reads as far as percentages it's 1 and 10, 10 referring to the amount going to the AG's office for enforcement and we changed it to 2 and 5 and that reduced the fiscal note from \$10.8 to \$5.8 million. Since then in running the numbers once we had this with all the charitable organizations based on the last quarter and then stretching that out over a biennium. I have been working with the AG's office for the past 3 days trying to make everyone happy and have failed so far. I do however have one more thing up my sleeve that I want to try. I can say right now, the House will not get its \$5.8 million, there is no way to do this where everybody benefits and we keep it at \$5.8 million. There is a chance it could go to \$7.5 or \$7.8 million but more than likely it will wind up at \$10 million regardless. Again, I have one more thing I want to try with the Attorney General on Monday. My goal is to make sure none of the charitable organizations see an increase.

Senator Dotzenrod – The bill that we had introduced that came in on the Senate side came from an interim committee. It was interim Judiciary Committee and I was on the interim committee. During the interim we took testimony from different organizations, charitable groups, and we went through basically what they had available to themselves to spend on their charities, what their allowable expenses were and in the course of those hearings as really, it was kind of a consensus developed on that interim committee that the charities were very highly taxed and that became sort of one of the themes of what was the interim committee going to come up with. We took a look at what were the choices we had and one of the criteria we used is we went back to when the gaming first came in and what were we using, what was our tax rate at that time and how much money did the state feel it needed to have before we got in to these financial troubles of the 80's and 90's when we really were looking for money and we went to the charities and imposed these taxes. We feel we really

don't need to operate that way anymore. We could try to get back to what the spirit was, what the intent was, how these were all framed when they were set up. There was a feeling that with 1% tax we could get back and generally the state could do the gaming enforcement, have the revenues necessary to enforce the law, and collect what it needed to do its part and prior to that time one of the observations we had was that under the current situation the state was collecting in one quarter the money it took to fund all 8 quarters of the biennium for what the state needed.

Representative Owens – Thank you for the review of the interim committee. I wasn't involved in that and I appreciate your point although I will disagree with you on the highest tax thing because it depends on whether you are looking at gross vs. adjusted gross. Currently in law they pay taxes on adjusted gross. In that adjusted gross scale it is a pretty high tax for adjusted gross income, I agree with you 100%, but, we are switching to gross. When you compare now under gross to what it was, they are paying 3%, 2%, 4%. It's very low. The statement that they are taxed at a very high rate again depends on at what point we are talking about, the adjusted gross or the gross. Since the new bill deals with gross all I've been focused on is the gross. I tried to go back to adjusted gross, trust me you don't want to go there. What I really liked when this bill first hit Tax and Finance was that it essentially was a flat tax for gaming. We had 2 taxes and got rid of both of them. It's simple math.

Senator Dotzenrod – Independent of whether it's on the gross or the adjusted gross what we found in the interim committee is that many of these charities were coming and paying for every \$100 about \$40 to the state and \$60 to the charity. The state share didn't seem to make any sense by any criteria that we could come up with. That the state should take that much out of \$100 of money that they had at their disposal after they paid off their expenses. So that is where I come up with a notion that they were substantially taxed.

Senator Miller – I think that is generally the consensus with people is why we want to lower this tax is because this money is used for charitable purposes and it's good in our communities.

Senator Hogue – The other part of my frustration with lowering these taxes, you don't do very good differentiation between these charities that are out there doing this gaming activity. I mean they deal blackjack and they have their pull tabs and some of them are these rural charities that really genuinely take their proceeds and need it for local ambulance service, local rural charities, and then in some of the larger communities like mine, but the purpose of the charity was to promote hockey and this allowed the hockey youth, or at least their parents in my view, it subsidized the hockey parents, what they would otherwise have to pay for ice time and all that. So, to me it's a tale of 2 different types of charities. Those that I think are genuinely devoted to helping their communities and providing a charitable purpose and these other ones that spring up that, they really are subsidizing some private activity and it's had a charitable label put on it. That's my frustration with lowering this tax besides the fiscal note.

Senator Miller – Maybe you are identifying a different issue that we should think about classifying different things in a different way and not necessarily the taxation part but what is your business activity.

Representative Kelsh – You said pretty much what I was going to say. Maybe it's just a reclassification or a tightening up of what constitutes a charity that is able to conduct gaming operations. In my community a lot of the gaming operations are run by Special Olympics and those types. Representative Grande pointed out during the debate on this bill on the floor that we are not lowering the tax on the people playing the games; we are lowering the tax on the organizations that are using that for operating income. I think that is an important distinction as well.

Representative Grande – I think anybody who knows where I stand, I stand very firm on lack of expansion of gaming. My involvement in this was not anywhere near the expansion of gaming but in the fairness of, if we are going to have charitable gaming, then give the money to the charities so they can do that. Let's get back to the purpose of charitable gaming. We need to get the money back in to the hands of the people that are trying to help people. One of the understandings that need to be brought up is the reason they are in this hole, is that we took away the smoking and gaming dropped of huge. How do you address that? Well maybe part of measure 3 could have been used to subsidize these nonprofits, but that's a different debate for a different day. I agree with Senator Hogue. Some of these charities you kind of go, wow I was really trying to help more of the Special Olympics, the organizations that fall into that category that we kind of think are more charitable. You could get in to the argument for hockey that if we subsidize this and the more kids that are involved in that are now not in trouble, so now they don't need the social programs that are needed in the other charitable organizations. I don't think today is the day, nor this bill will be able to solve the issue of the division of what classifications of charity and whether or not we want to get into that mess at this point, but I do feel that it's necessary to finally deal with this in a fashion that it is. This was meant for charitable giving and let's get the money back in the hands of the charity. Having said that, I've been hearing from people that are saying this is the highest tax. In some of them, as you alluded to, they are raising a small amount, they are paying, some of them 10%, but there's also some of the larger ones that because of the way the structure is, are paying 1.49%. Is that a heavy tax?

Senator Dotzenrod – I suppose each of us has a sense of what type of activities are going on in our districts. I have a rural district and we have smaller charitable community organizations and those are the numbers I'm familiar with and know fairly well and those are the people that I communicate with and talk to. It does seem they are really paying a lot of what they work for and generate for their charities doesn't get to the charity. It goes to the state.

Senator Miller – I think we've laid out the ground work on the need of the charities but I think what we have to do here is we have to figure out is \$10 million too big of a fiscal note to pass the House?

Representative Owens – It's apparent we want to make sure it's the charities and I do not disagree with that, they are actually getting the benefit, the ones that are using it for a charitable purpose but I agree that's in a different policing bill if you will. This is strictly tax and finance and I think the consensus here that we've heard here is everybody wants to lower the tax and thinks it deserves to be lowered and would like a flat tax but because we are going to flat tax on gross that is where the trouble is coming in rather than leaving it with the adjusted gross and doing it that way and we get rid of 2 taxes and go to 1. My battle so

far for the past 3 or 4 days hasn't been about this percentage or that percentage. I've been fighting what would possibly pass the House. If we go through this process and let's say we just accede to the Senate version and we rescind the House amendments, we go back to the 1 and 10, it goes on the floor and dies, where are we? We are right back where we were. We've got current law again and you still have on adjusted gross income some very high taxes. I'm asking to try my one thing I have left up my sleeve and see if I can pull something together out of that to just take a little off the top possibly.

Senator Hogue – I was just going to throw out the question of how the conference committee feels about attaching a study to consider what charities that apply to do gaming operations should be eligible to go gaming operations.

Senator Miller – It's worth drafting an amendment at least.

Senator Miller closed discussion on SB 2042.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2042
4/13/2011
Job Number 16529

☒ Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Relating to consolidation of gaming taxes and allowable expenses

Minutes:

Conference Committee

Senator Miller opened discussion on SB 2042.

Senator Miller – I will start by handing out Senator Hogue's study amendment. Senator Hogue, would you like to explain?

Senator Hogue – I think it just follows up our discussion at our previous conference committee meeting where I expressed some concerns about how we license certain organizations to be eligible for this and I'd like to have it studied if we could. So that is the purpose of the amendment is to propose discretionary study in the upcoming interim.

Senator Miller – Representative Owens, you have been doing some work, you want to update us?

Representative Owens – The last great plan failed. It's not going to get it done, so, in that case I will make a motion that the House recedes from its amendments and further amends to go back to the 1% and the 10%, that the effective date begins after the taxable years following December 31, 2011 and further amends to include Senator Hogue's study.

Seconded by **Representative Grande**.

Senator Miller asked that we table the motion until the amendments are on paper.

Representative Grande tabled the motion.

Seconded by **Representative Owens**.

Senator Miller – All in favor of the table motion say yea, opposed? (6-0-0)

Senator Miller closed discussion on SB 2042.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2042
4/14/2011
Job Number 16605

☒ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Relating to consolidation of gaming taxes and allowable expenses

Minutes:

Conference Committee

Senator Miller opened discussion on SB 2042.

Senator Miller – I think what we are agreeing on is that we'll adopt this effective date, January 1, 2012.

Representative Grande – I move to remove the proposed motion off the table.

Seconded by **Representative Owens**.

Senator Miller – All in favor say yea, opposed? (6-0-0) What was moved prior was the option 1 amendments.

Representative Grande – I move option 1 as an acceptable motion where the House will recede from its amendments and further amend.

Seconded by **Representative Kelsh**.

Senator Miller – Have the clerk take the roll. (6-0-0)

Senator Miller closed discussion on SB 2042.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2042
4/20/2011
Job Number 16794

☒ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Relating to consolidation of gaming taxes and allowable expenses

Minutes:

Conference Committee

Senator Miller opened discussion on SB 2042.

Senator Miller went through his proposed amendment.

Representative Grande – I would have to resist this in the fact that the one group that was so vocal on the House side pays more. This affects them in reverse and I know I can't go home to that group and say sorry you asked for a decrease but we increased you instead. That's just not going to fly.

Senator Miller – I believe that increase is their tax by \$85 or something like that.

Representative Grande – It increases it, yes, but they are looking for a decrease because they can't stay functioning at this point with where they are at.

Senator Miller – In my conversations with the Plains Art Museum they seemed fine with 1.5%.

Representative Grande – That would be really interesting, I will call the Director.

Representative Owens talked about a chart that shows who would be saving and how much.

Representative Kelsh – I think one of the points that needs to be made is these organizations are in gaming. They rely on it to meet their budget and to fulfill their mission and I think if we don't pass something substantial this time they are going to be back and they are going to be asking for an expansion of gaming.

Discussion followed on the possible taxing options and rates.

Senator Miller closed discussion on SB 2042.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2042
4/21/2011
Job Number 16830

☒ Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Relating to consolidation of gaming taxes and allowable expenses

Minutes:

Conference Committee

Senator Miller opened discussion on SB 2042.

Representative Owens explained his proposed amendment .03012 and moved them.

Seconded by **Representative Grande**.

Senator Dotzenrod expressed his approval of these amendments.

Discussion followed on the rates that will be received by the organizations.

Senator Miller asked the clerk to take the roll (6-0-0)

April 14, 2011

JB
4-14-11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2042

That the House recede from its amendments as printed on page 898 of the Senate Journal and page 1083 of the House Journal and that Engrossed Senate Bill No. 2042 be amended as follows:

Page 1, line 3, after "expenses" insert "; to provide for a legislative management study; and to provide an effective date"

Page 5, after line 10, insert:

"SECTION 5. LEGISLATIVE MANAGEMENT STUDY - CHARITABLE GAMING ORGANIZATION ELIGIBILITY. During the 2011-12 interim, the legislative management shall consider studying the eligibility requirements for the veterans', charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations that conduct charitable gaming. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 6. EFFECTIVE DATE. Sections 1 through 4 of this Act are effective January 1, 2012."

Renumber accordingly

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Finance and Taxation

Bill/Resolution No. SB 2042 as (re) engrossed

Date: 4/14/2011

Roll Call Vote #: 1

- Action Taken**
- ☐ SENATE accede to House amendments
 - ☐ SENATE accede to House amendments and further amend
 - ☐ HOUSE recede from House amendments
 - ☒ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 898 --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) SB 2042 was placed on the Seventh order of business on the calendar

Motion Made by: Representative Grande Seconded by: Representative S. Kelsh

Senators				Yes	No		Representatives				Yes	No
Senator Miller	X	X	X	X			Representative Owens	X	X	X	X	
Senator Hogue	X	X	X	X			Representative Grande	X	X	X	X	
Senator Dotzenrod	X	X	X	X			Representative S. Kelsh	X	X	X	X	

Vote Count: Yes 6 No 0 Absent 0


Senate Carrier Senator Miller House Carrier Representative Owens

LC Number 11.0252 . 03007 of amendment

LC Number of engrossment

Emergency clause added or deleted

Statement of purpose of amendment


4-21-11
16+2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2042

That the House recede from its amendments as printed on page 898 of the Senate Journal and page 1083 of the House Journal and that Engrossed Senate Bill No. 2042 be amended as follows:

Page 1, line 3, after "expenses" insert "; and to provide for a legislative management study"

Page 3, remove lines 3 through 30

Page 4, replace lines 1 through 9 with:

"SECTION 3. AMENDMENT. Section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12. Gaming and ~~excise taxes~~ - Exceptiontax - Deposits and allocations.

1. A gaming tax is imposed on the total ~~adjusted~~ gross proceeds ~~earned~~received by a licensed organization in a quarter and it must be computed and paid to the attorney general on a quarterly basis on the tax return. This tax must be paid from adjusted gross proceeds and is not part of the allowable expenses. The tax ~~rates are:~~
 - a. ~~On adjusted gross proceeds not exceeding two hundred thousand dollars, a tax of five percent.~~
 - b. ~~On adjusted gross proceeds exceeding two hundred thousand dollars but not exceeding four hundred thousand dollars, a tax of ten percent.~~
 - c. ~~On adjusted gross proceeds exceeding four hundred thousand dollars but not exceeding six hundred thousand dollars, a tax of fifteen percent.~~
 - d. ~~On adjusted gross proceeds exceeding six hundred thousand dollars, a tax of twenty percent.~~
2. ~~Except as provided in subsection 3, in addition to any other tax provided by law and in place of sales or use taxes, there is imposed on a licensed organization an excise tax of three percent on the gross proceeds from the sale at retail of pull tabs and three percent on the gross proceeds from the sale at retail of bingo cards to final users. This includes pull tabs or bingo cards provided to a player in exchange for redeemed winning pull tabs or bingo cards.~~rate for a licensed organization with gross proceeds:
 - a. Not exceeding five hundred thousand dollars is one percent of gross proceeds.
 - b. Exceeding five hundred thousand dollars but not exceeding one million dollars is one and one-half percent of gross proceeds.
 - c. Exceeding one million dollars but not exceeding one million five hundred thousand dollars is two percent of gross proceeds.

d. Exceeding one million five hundred thousand dollars is two and one-half percent of gross proceeds.

2. The tax must be paid to the attorney general at the time tax returns are filed.
3. ~~For organizations whose gross proceeds of pull tabs do not exceed four thousand dollars per calendar quarter, no excise tax may be imposed on the gross proceeds from the sale at retail of pull tabs to final users.~~
4. Except as provided in subsection ~~54~~, the attorney general shall deposit gaming and excise taxes, monetary fines, and interest and penalties collected in the general fund in the state treasury.
- 5-4. The attorney general shall deposit ~~three~~six percent of the total taxes, less refunds, collected under this section into a gaming and excise tax allocation fund. Pursuant to legislative appropriation, moneys in the fund must be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations conducting games within each city, for sites within city limits, or within each county, for sites outside city limits. If a city or county allocation under this subsection is less than two hundred dollars, that city or county is not entitled to receive a payment for the quarter and the undistributed amount must be included in the total amount to be distributed to other cities and counties for the quarter."

Page 5, after line 10, insert:

"SECTION 5. LEGISLATIVE MANAGEMENT STUDY - CHARITABLE GAMING ORGANIZATION ELIGIBILITY. During the 2011-12 interim, the legislative management shall consider studying the eligibility requirements for the veterans', charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations that conduct charitable gaming. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Finance and Taxation

Bill/Resolution No. SB 2042 as (re) engrossed

Date: 4/21/2011

Roll Call Vote #: 1

- Action Taken**
- ☐ SENATE accede to House amendments
 - ☐ SENATE accede to House amendments and further amend
 - ☐ HOUSE recede from House amendments
 - ☒ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 898 --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) SB 2042 was placed on the Seventh order of business on the calendar

Motion Made by: Representative Owens Seconded by: Representative Grande

Senators			Yes	No		Representatives			Yes	No
Senator Miller	X	X	X			Representative Owens	X	X	X	
Senator Hogue	X	X	X			Representative Grande	X	X	X	
Senator Dotzenrod	X	X	X			Representative S. Kelsh	X	X	X	

Vote Count: Yes 6 No 0 Absent 0

Senate Carrier Senator Miller House Carrier Representative Owens

LC Number 11.0252 . 03012 of amendment

LC Number of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2042, as engrossed: Your conference committee (Sens. Miller, Hogue, Dotzenrod and Reps. Owens, Grande, S. Kelsh) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 898, adopt amendments as follows, and place SB 2042 on the Seventh order:

That the House recede from its amendments as printed on page 898 of the Senate Journal and page 1083 of the House Journal and that Engrossed Senate Bill No. 2042 be amended as follows:

Page 1, line 3, after "expenses" insert "; to provide for a legislative management study; and to provide an effective date"

Page 5, after line 10, insert:

"SECTION 5. LEGISLATIVE MANAGEMENT STUDY - CHARITABLE GAMING ORGANIZATION ELIGIBILITY. During the 2011-12 interim, the legislative management shall consider studying the eligibility requirements for the veterans', charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations that conduct charitable gaming. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 6. EFFECTIVE DATE. Sections 1 through 4 of this Act are effective January 1, 2012."

Renumber accordingly

Engrossed SB 2042 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE

SB 2042, as engrossed: Your conference committee (Sens. Miller, Hogue, Dotzenrod and Reps. Owens, Grande, S. Kelsh) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 898, adopt amendments as follows, and place SB 2042 on the Seventh order:

That the House recede from its amendments as printed on page 898 of the Senate Journal and page 1083 of the House Journal and that Engrossed Senate Bill No. 2042 be amended as follows:

Page 1, line 3, after "expenses" insert "; and to provide for a legislative management study"

Page 3, remove lines 3 through 30

Page 4, replace lines 1 through 9 with:

"SECTION 3. AMENDMENT. Section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12. Gaming and ~~excise taxes~~ Exception tax - Deposits and allocations.

1. A gaming tax is imposed on the total ~~adjusted~~ gross proceeds ~~earned~~ received by a licensed organization in a quarter and it must be computed and paid to the attorney general on a quarterly basis on the tax return. This tax must be paid from adjusted gross proceeds and is not part of the allowable expenses. The tax rates are:
 - a. ~~On adjusted gross proceeds not exceeding two hundred thousand dollars, a tax of five percent.~~
 - b. ~~On adjusted gross proceeds exceeding two hundred thousand dollars but not exceeding four hundred thousand dollars, a tax of ten percent.~~
 - c. ~~On adjusted gross proceeds exceeding four hundred thousand dollars but not exceeding six hundred thousand dollars, a tax of fifteen percent.~~
 - d. ~~On adjusted gross proceeds exceeding six hundred thousand dollars, a tax of twenty percent.~~
2. Except as provided in subsection 3, in addition to any other tax provided by law and in place of sales or use taxes, there is imposed on a licensed organization an excise tax of three percent on the gross proceeds from the sale at retail of pull tabs and three percent on the gross proceeds from the sale at retail of bingo cards to final users. This includes pull tabs or bingo cards provided to a player in exchange for redeemed winning pull tabs or bingo cards. rate for a licensed organization with gross proceeds:
 - a. Not exceeding five hundred thousand dollars is one percent of gross proceeds.
 - b. Exceeding five hundred thousand dollars but not exceeding one million dollars is one and one-half percent of gross proceeds.
 - c. Exceeding one million dollars but not exceeding one million five hundred thousand dollars is two percent of gross proceeds.

- d. Exceeding one million five hundred thousand dollars is two and one-half percent of gross proceeds.
2. The tax must be paid to the attorney general at the time tax returns are filed.
3. ~~For organizations whose gross proceeds of pull tabs do not exceed four thousand dollars per calendar quarter, no excise tax may be imposed on the gross proceeds from the sale at retail of pull tabs to final users.~~
4. Except as provided in subsection ~~54~~, the attorney general shall deposit gaming and excise taxes, monetary fines, and interest and penalties collected in the general fund in the state treasury.
- ~~5-4.~~ The attorney general shall deposit ~~three~~six percent of the total taxes, less refunds, collected under this section into a gaming and excise tax allocation fund. Pursuant to legislative appropriation, moneys in the fund must be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations conducting games within each city, for sites within city limits, or within each county, for sites outside city limits. If a city or county allocation under this subsection is less than two hundred dollars, that city or county is not entitled to receive a payment for the quarter and the undistributed amount must be included in the total amount to be distributed to other cities and counties for the quarter."

Page 5, after line 10, insert:

"SECTION 5. LEGISLATIVE MANAGEMENT STUDY - CHARITABLE GAMING ORGANIZATION ELIGIBILITY. During the 2011-12 interim, the legislative management shall consider studying the eligibility requirements for the veterans', charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations that conduct charitable gaming. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

Engrossed SB 2042 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2042

A

EXCERPT FROM INTERIM JUDICIARY COMMITTEE REPORT REGARDING SENATE BILL NO. 2042

PROVIDED BY: VONETTE RICHTER, LEGISLATIVE COUNCIL

JANUARY 19, 2011

CHARITABLE GAMING STUDY

Senate Concurrent Resolution No. 4028 directed a study of the charitable gaming and pari-mutuel racing laws to determine whether the laws regarding taxation, limitations, administration, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate. The legislative history regarding this resolution indicated that a comprehensive review of the state's charitable gaming laws has not been conducted since the 1993-94 interim and that a thorough review of laws governing charitable gaming was necessary to ensure that laws regarding taxes, expense limitations, enforcement, conduct, and play of charitable games are adequate to govern charitable gaming under current conditions.

Under Chapters 53-06.1 (Games of Chance) and 53-06.2 (Pari-Mutuel Horse Racing), certain charitable organizations are permitted to conduct a limited array of games of chance and horse racing events.

Testimony and Committee Considerations

The committee received testimony and information from the Gaming Division of the Attorney General's office, charitable organizations, gaming vendors, members of the Charitable Gaming Association of North Dakota, the executive director and members of the Racing Commission, and other individuals involved in horse racing.

Charitable Gaming Taxes and Allowable Expenses

The committee reviewed extensive information submitted by the Gaming Division of the Attorney General's office with regard to all aspects of the charitable gaming industry. According to the testimony, although the charitable gaming industry in North Dakota continues to be fairly healthy, there has been a decrease in the number of licensed gaming organizations over the years. It was noted that without periodic changes to the play of games, gaming activity tends to go flat. It was also noted that expenses continue to rise for the charities, especially with the increases in the minimum wage. It was suggested that it may be time to review the laws relating to the gaming tax structure and the allowable expense structure.

In an analysis of gaming activity for the calendar year ending December 31, 2008, the committee received testimony that the amount wagered on charitable games for that year was \$265,805,193, an amount that represented a 2.9 percent increase or \$7,539,813 from calendar year 2007. It was reported that all major game types had increases in the amount wagered in 2008, including pull tab dispensing devices, which increased

5.9 percent or \$3,125,850; twenty-one, which increased 2.6 percent or \$1,955,784; pull tab jars, which increased 2.5 percent or \$2,158,677; and bingo, which increased .9 percent or \$300,600. Poker had the largest percentage decrease of 37.5 percent or \$445,576 during calendar year 2008. Approximately 79 percent of the amount collected from charitable gaming goes back to the players as prizes. It was noted that the estimated \$17.3 million that will be deposited in the general fund from charitable gaming taxes in the current biennium makes the state of North Dakota the single largest recipient of proceeds from charitable gaming. The testimony also indicated that the old technology of stamps on pull tabs is another area to consider changing. It was noted that the North Dakota charitable gaming industry is locked into this old technology because the requirements are set in statute. According to the testimony, the gaming industry has evolved, and the statutes have not kept pace. It was noted that there are gaming organizations that have been in the gaming business for decades but are unable to make a profit for their charity. For those gaming organizations for which the expenses exceed the profits, the gaming organization is forced to pay the charity from other sources within the organization.

The committee also received testimony regarding biennial gaming tax collection. The state collects about \$15.4 million in gaming taxes per biennium. The Attorney General's general fund appropriation for the Gaming Division is about \$1.8 million per biennium. Of that amount, approximately \$510,000 is paid to local law enforcement for gaming enforcement and approximately \$6,000 is appropriated for the State Gaming Commission's expenses. The state collects about \$80,000 from gaming stamps and is reimbursed about \$247,000 from the tribes for casino inspections. It was noted that the amount of taxes collected in one quarter, or about \$1.9 million, is more than enough to cover the state's gaming administration costs for the biennium.

As a result of a survey of gaming organizations conducted by the Gaming Division of the Attorney General's office, the committee received testimony regarding recommendations those organizations may have for changes. Of the 326 licensed gaming organizations in the state, 48 responded to the survey, or approximately 15 percent. The survey results indicated that 51 percent of the gaming organizations responding do not consider the gaming tax on adjusted gross proceeds to be fair and appropriate, 59 percent would prefer a flat tax based on a single taxable amount rather than a progressive tax based on periodic increases, 72 percent would support a single percentage expense allowance on adjusted gross proceeds, and 51 percent would support a single expense allowance

even if it slightly decreased the organization's expense amount in some quarters if the entire process was simplified. It was noted that although 72 percent of respondents indicated that the current gaming tax return is easy to prepare, about one-half indicated they have some problems with the form or need adjustments.

The committee also received testimony from the Charitable Gaming Association of North Dakota and from representatives of individual gaming organizations regarding issues facing the charitable gaming industry in the state. According to the testimony, because there has not been any major change in the operation of charitable games in the state since 2001 when the bet limit for the game of twenty-one was increased, the charitable gaming industry is seeing a decrease in activity and is in need of changes. It was suggested that because electronic gaming is easier to audit and control and is a "greener" way to conduct gaming, the state may want to consider a move to more electronic devices for conducting charitable gaming. Other testimony indicated support for changes to the tax structure of charitable gaming as long as there is not an organization that would be penalized by paying an increase in taxes because of these changes. It was also suggested that the state may want to consider increasing the minimum bet in blackjack to \$2 per hand, increasing the number of occasions that an organization can conduct poker events, and allowing electronic variations of existing game types.

Several members of the committee expressed concern that the state should be taxing charitable gaming only in an amount sufficient to cover gaming administration and enforcement expenses. In light of these concerns, the committee considered a bill draft that would have provided for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 58 percent for all organizations and that would have consolidated all taxes into a flat rate of 3.16 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds.

Testimony in explanation of the bill draft indicated that although the bill draft would simplify the gaming tax structure from a progressive tax based upon adjusted gross proceeds to a flat tax of 3.16 percent of gross proceeds, the bill draft was revenue-neutral, and the state would continue to collect about \$15.4 million per biennium in gaming taxes. The testimony indicated that the bill draft would help the smaller organizations, most of which are now paying 4 percent to 5 percent of gross proceeds in gaming taxes. It was noted that about 80 percent of the gaming organizations would see a tax reduction while about 20 percent would see an increase. The testimony indicated that to get the entire industry to support the tax rates in the bill draft, it is likely that the rate would have to be lower than 3.16 percent.

The committee also considered a bill draft that provided for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 60 percent for all organizations and which consolidated all taxes into a

flat rate of 1 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds. Testimony in explanation of the bill draft indicated that based on the current wagering level and average tax rate, each one-half percent decrease in the tax rate on gross proceeds represents a \$1.25 million decrease in tax collected per year, or \$2.5 million per biennium. If the tax rate on gross proceeds were reduced from 3.16 percent, as was reflected in the first bill draft considered by the committee, to 1 percent of gross proceeds, the tax collections would be reduced to \$2.5 million per year, or \$5 million per biennium.

The testimony in explanation of the bill draft also indicated that Section 53-06.1-12, which provides for the deposit of 3 percent of the total taxes collected to be deposited into a gaming tax allocation fund that is allocated to cities and counties for gaming enforcement, would need to be adjusted from 3 percent to 10 percent if it was the committee's intent to continue to return the same amount to the local governments each biennium. According to the testimony, the current tax payback to cities and counties is limited to a maximum of \$510,000 per biennium. How the money that is distributed to the cities and counties is used varies by community. The City of Fargo uses the money to hire a separate employee for gaming enforcement, while other communities use the money to offset law enforcement costs. The committee amended the bill draft to change the percentage in Section 53-06.1-12 from 3 percent to 10 percent.

Testimony in support of the bill draft indicated that a tax rate of 1 percent is very significant for the gaming industry because it provides relief for all sizes organizations. According to the testimony, the current tax rate has been a burden to most gaming organizations. It was noted that reduction to a 1 percent tax would allow more money to be used for charitable purposes--the reason gaming was established in the state.

Several committee members indicated that the beneficiary of this bill draft will be the charities, which was the initial intent of charitable gaming. One committee member noted that the bill draft does not expand gaming, but rather makes gaming fairer.

Recommendation

The committee recommends Senate Bill No. 2042 relating to charitable gaming taxes and allowable expenses. The bill provides for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 60 percent for all organizations and consolidates all gaming taxes into a flat rate of 1 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds. The bill also increases from 3 percent to 10 percent the amount of the total taxes collected which is deposited into the gaming tax allocation fund.

TESTIMONY
SENATE BILL 2042
TAX AND FINANCE COMMITTEE
JANUARY 19, 2011

Chairperson and members of the committee:

Citizen Assistance Programs (CAP) is in support of Senate Bill 2042 – eliminating three different charitable gaming taxes and creating one tax at 1% of Gross Proceeds.

CAP is a charitable non-profit organization which extends services to mentally, physically or otherwise disadvantaged individuals.

From October 1, 2009 through September 30, 2010 CAP gaming sites paid \$42,802 in gaming tax.

Under the proposed SB 2042 CAP would have saved \$17,426 in taxes.

TESTIMONY IN SUPPORT OF
SENATE BILL NO. 2042
FINANCE AND TAXATION
JANUARY 19, 2011


Chairman Cook, Finance and Taxation Committee members, my name is **Marvin Knutson** and I appear before you today as Vice-President of the Charitable Gaming Association of North Dakota (CGAND) in support of SB 2042.

I am the bookkeeper for the Bison Booster Club of Milnor, ND and some of the numbers I quote are based on that organization.

The gaming industry has seen a serious economic decrease in the past couple of years, due to the overall economy of the country. The financial status and the survival of some of the businesses hang by a thread in some locals.

In our own local, as an example, the swimming pool, the community center, the golf course and many extra activities at the school, to name a few, rely on gambling funds for everyday operations and especially help during a crises, i.e., spring flooding.


In able to stay in business, we all need the additional income generated by the increase to 60% for expenses, but our communities especially need the extra donation money generated by the reduction of the tax rate to 1%. In looking at our business in Milnor, that increase would be about \$9800 annually, based on our last four (4) quarterly reports.



That is \$9800 that will be used to pay charitable requests in the Milnor-Delamere, McLeod, Sargent/Ransom Counties area.

The new formula for calculating taxes will include the Special Fund appropriations for cities/counties and the funding for the Attorney General's Gaming Division, so the only decrease in funding will be in the General Fund, which currently has more money than it needs.

After considering all aspects, we respectfully request that you support your local charities and that you give SB 2042 a **DO PASS** recommendation.



Thank you for the opportunity to testify, and I would be willing to try to answer any questions.



SB 2042 Testimony

Ken Karls – Cystic Fibrosis Association of North Dakota

January 19, 2011

Mr. Chairman and members of the Committee, I am here to testify in favor of SB 2042. My name is Ken Karls and I work for the Cystic Fibrosis Association ND. We exist to provide financial, educational and emotional support for North Dakota families who have members with cystic fibrosis. We are an independent entity and are not affiliated with any national or international parent group. We neither apply nor budget for any federal or state government grants. Because we participate in charitable gaming, we are not eligible for support from the United Way.

Our financial support is generated through private individual and corporate contributions, special events and charitable gaming.

I am enclosing an attachment that illustrates our best guess at the difference SB 2042 will make to our net proceeds being transferred to our Trust Fund. The Trust Fund is the money we use to pay for the services we provide to families we help. As you can see, the impact to CFA had SB 2042 been in effect during the past four calendar quarters would have been approximately \$70,000. That is, we would have paid \$70,000 less in taxes and that amount would have been divided between additional allowable expenses and increased net proceeds.

Even though more of the \$70,000 benefit goes to the allowable expense side of the ledger, we believe that will prove to be very beneficial to the long-range prospects for CFA.

The reason many of the ND charities involved in gaming have gone out of business in recent years is attributable to not being able to keep under the allowable expense limit. Because we are non-profit corporations, we must use "fund accounting." Any money that comes to the charity must be specifically allocated to one of three funds; gaming, trust or general.

In charitable gaming, the adjusted gross proceeds (AGP) go first to the gaming account, from which all gaming expenses are paid. However, only a set percentage of AGP is allowed to be spent on gaming expenses because a set percentage of gaming AGP must be transferred to the Trust Fund for use in providing member services.

Any gaming expenses that exceed the allowable limit must of course, be paid, but cannot be paid by the Trust Fund. If the Gaming Fund lacks sufficient reserve to cover both the Trust Fund transfer and the gaming expenses, the charity must pay them from the General Fund.

Depletion of the General Fund is what has driven these charities from charitable gaming. Inadequate resources in the General Fund in this case results in not being able to pay bills, including those associated with charitable gaming, so the programs and services that would have been provided from money put into the Trust Fund go unfunded and the charity goes out of business. This leaves the burden for providing these services to government or some other agency.

Increasing the allowable expense limit for providing gaming will help to insulate the General Fund from having to reimburse for shortages in paying gaming expenses. It will allow us to direct more General Fund money to other uses more directly aligned to our charitable mission.

The contribution to Gross State Revenues by charitable gaming taxes is not large. While one cannot say it is insignificant to the North Dakota, it is extremely significant to charities that provide services to state residents. An additional 12-13% in net proceeds transfer, coupled with a 9.7% increase in allowable expenses will do much to improve the economic viability of our charity and improve the level of service we can provide to our member families.

I urge a Do Pass on this bill. I will attempt to answer any questions you may have relating to my testimony. Thank you.

C

Cystic Fibrosis Association of North Dakota

Present

	Gross Proceeds	AGP	Expenses	Tax Due	Net Proceeds Transfer
12/31/09	\$1,004,539	\$213,547	\$118,139	\$29,673	\$65,735
03/31/10	\$955,226	\$206,106	\$111,971	\$28,502	\$65,633
06/30/10	\$900,797	\$170,310	\$93,000	\$25,045	\$52,265
09/30/10	\$844,834	\$163,061	\$88,871	\$23,303	\$50,887
Totals	\$3,705,396	\$753,024	\$411,981	\$106,523	\$234,520

SB 2042

	Gross Proceeds	AGP	60% Exp.	Tax Due	Net Proceeds Transfer	Increase in Net
12/31/09	\$1,004,539	\$213,547	\$128,128	\$10,045	\$75,373	14.66%
03/31/10	\$955,226	\$206,106	\$123,664	\$9,552	\$72,890	11.06%
06/30/10	\$900,797	\$170,310	\$102,186	\$9,008	\$59,116	13.11%
09/30/10	\$844,834	\$163,061	\$97,837	\$8,448	\$56,776	11.57%
Totals	\$3,705,396	\$753,024	\$451,814	\$37,053	\$264,155	12.64%

Difference	\$0	\$0	\$39,833	-\$69,470	\$29,635
------------	-----	-----	----------	-----------	----------

Inaccuracies are due to rounding

TESTIMONY IN SUPPORT OF
SENATE BILL NO. 2042
FINANCE AND TAXATION
JANUARY 19, 2011

Chairman Cook, Finance and Taxation Committee Members, my name is Karen Breiner and I appear before you today on behalf of Plains Art Museum and its Board of Directors in support of Senate Bill (SB) 2042.

I am the Gaming Manager for Plains Art Museum, past president of Charitable Gaming Association of North Dakota, a current member of the Gaming Advisory Board, and I have been following the Interim Judicial Committee's study of the charitable gaming tax structure over the past year.

Senate Bill 2042 is a bill that will not only help Plains Art Museum further its mission of bringing people and art together, but it will help every charitable gaming organization in the state of North Dakota with necessary tax relief. SB 2042 addresses the needs of the Office of Attorney General Gaming Division by providing a simplified tax structure and it continues to provide the necessary funding for local law enforcement.

We respectfully request that you support SB 2042 by giving it a DO PASS recommendation.

I appreciate your time. I am willing to answer any questions you have.

Finance and Taxation Committee
History of Gaming Taxes
January 19, 2011

1977

Gaming tax established at 3% of adjusted gross proceeds.

1979

Gaming tax rate increased from 3% to 5% of adjusted gross proceeds.

1983

The gaming tax rate changed from 5% of adjusted gross proceeds to 5% on the first \$600,000 of adjusted gross proceeds and 20% on adjusted gross proceeds over \$600,000 per quarter.

1989

The gaming tax rate was changed to 5% up to \$200,000, 10% on \$200,000 up to \$400,000, 15% on \$400,000 up to \$600,000, and 20% on amounts over \$600,000 on adjusted gross proceeds per quarter. In addition, a 2% excise tax was imposed on pull tab gross proceeds and sales tax was imposed on bingo cards.

1993

The excise tax on pull tab gross proceeds was increased from 2% to 4½%.

2001

The 4½% excise tax on pull tab gross proceeds was eliminated for organizations whose gross proceeds did not exceed \$4,000 for a quarter.

2007

Sales tax was no longer imposed on bingo cards but it was replaced with a 3% excise tax on the gross sales of bingo cards.

2009

The 4½% excise tax on pull tab gross proceeds was reduced to 3%.

Finance and Taxation Committee
History of Allowable Expenses
January 19, 2011

1977

Allowable expenses limited to 33⅓% of adjusted gross proceeds.

1981

Allowable expenses increased to 35% of adjusted gross proceeds.

1983

Allowable expenses increased to 38% for organizations conducting at more than 1 site with the remainder of organizations at 35% of adjusted gross proceeds.

1985

Allowable expenses increased to 40% for organizations that used net proceeds for their own purpose and 45% of adjusted gross proceeds for organizations that gave away all of its net proceeds.

1987

Allowable expenses increased to 45% of adjusted gross proceeds for all organizations.

1989

Allowable expenses increased to 50% of the first \$200,000 of adjusted gross proceeds per quarter and 45% on the remainder.

1995

In addition to the standard allowable expenses organizations were allowed to expense 2½% of the gross proceeds on pull tabs.

1997

Allowable expenses were increased for capital expenditures for video surveillance equipment required by law.

2001

Allowable expenses increased to 51% of the first \$200,000 of adjusted gross proceeds per quarter and 45% on the remainder. In addition, if an organization's total actual expenses exceed the allowable expenses including the 2½% of the gross proceeds on pull tabs and expenditures for video surveillance, an additional 2% of adjusted gross proceeds on the first \$200,000 of adjusted gross proceeds is allowed.

EXCERPT FROM INTERIM JUDICIARY COMMITTEE REPORT REGARDING ENGROSSED SENATE BILL NO. 2042

PROVIDED BY: VONETTE RICHTER, LEGISLATIVE COUNCIL

FEBRUARY 8, 2011

CHARITABLE GAMING STUDY

Senate Concurrent Resolution No. 4028 directed a study of the charitable gaming and pari-mutuel racing laws to determine whether the laws regarding taxation, limitations, administration, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate. The legislative history regarding this resolution indicated that a comprehensive review of the state's charitable gaming laws has not been conducted since the 1993-94 interim and that a thorough review of laws governing charitable gaming was necessary to ensure that laws regarding taxes, expense limitations, enforcement, conduct, and play of charitable games are adequate to govern charitable gaming under current conditions.

Under Chapters 53-06.1 (Games of Chance) and 53-06.2 (Pari-Mutuel Horse Racing), certain charitable organizations are permitted to conduct a limited array of games of chance and horse racing events.

Testimony and Committee Considerations

The committee received testimony and information from the Gaming Division of the Attorney General's office, charitable organizations, gaming vendors, members of the Charitable Gaming Association of North Dakota, the executive director and members of the Racing Commission, and other individuals involved in horse racing.

Charitable Gaming Taxes and Allowable Expenses

The committee reviewed extensive information submitted by the Gaming Division of the Attorney General's office with regard to all aspects of the charitable gaming industry. According to the testimony, although the charitable gaming industry in North Dakota continues to be fairly healthy, there has been a decrease in the number of licensed gaming organizations over the years. It was noted that without periodic changes to the play of games, gaming activity tends to go flat. It was also noted that expenses continue to rise for the charities, especially with the increases in the minimum wage. It was suggested that it may be time to review the laws relating to the gaming tax structure and the allowable expense structure.

In an analysis of gaming activity for the calendar year ending December 31, 2008, the committee received testimony that the amount wagered on charitable games for that year was \$265,805,193, an amount that represented a 2.9 percent increase or \$7,539,813 from calendar year 2007. It was reported that all major game types had increases in the amount wagered in 2008, including pull tab dispensing devices, which increased

5.9 percent or \$3,125,850; twenty-one, which increased 2.6 percent or \$1,955,784; pull tab jars, which increased 2.5 percent or \$2,158,677; and bingo, which increased .9 percent or \$300,600. Poker had the largest percentage decrease of 37.5 percent or \$445,576 during calendar year 2008. Approximately 79 percent of the amount collected from charitable gaming goes back to the players as prizes. It was noted that the estimated \$17.3 million that will be deposited in the general fund from charitable gaming taxes in the current biennium makes the state of North Dakota the single largest recipient of proceeds from charitable gaming. The testimony also indicated that the old technology of stamps on pull tabs is another area to consider changing. It was noted that the North Dakota charitable gaming industry is locked into this old technology because the requirements are set in statute. According to the testimony, the gaming industry has evolved, and the statutes have not kept pace. It was noted that there are gaming organizations that have been in the gaming business for decades but are unable to make a profit for their charity. For those gaming organizations for which the expenses exceed the profits, the gaming organization is forced to pay the charity from other sources within the organization.

The committee also received testimony regarding biennial gaming tax collection. The state collects about \$15.4 million in gaming taxes per biennium. The Attorney General's general fund appropriation for the Gaming Division is about \$1.8 million per biennium. Of that amount, approximately \$510,000 is paid to local law enforcement for gaming enforcement and approximately \$6,000 is appropriated for the State Gaming Commission's expenses. The state collects about \$80,000 from gaming stamps and is reimbursed about \$247,000 from the tribes for casino inspections. It was noted that the amount of taxes collected in one quarter, or about \$1.9 million, is more than enough to cover the state's gaming administration costs for the biennium.

As a result of a survey of gaming organizations conducted by the Gaming Division of the Attorney General's office, the committee received testimony regarding recommendations those organizations may have for changes. Of the 326 licensed gaming organizations in the state, 48 responded to the survey, or approximately 15 percent. The survey results indicated that 51 percent of the gaming organizations responding do not consider the gaming tax on adjusted gross proceeds to be fair and appropriate, 59 percent would prefer a flat tax based on a single taxable amount rather than a progressive tax based on periodic increases, 72 percent would support a single percentage expense allowance on adjusted gross proceeds, and 51 percent would support a single expense allowance

even if it slightly decreased the organization's expense amount in some quarters if the entire process was simplified. It was noted that although 72 percent of respondents indicated that the current gaming tax return is easy to prepare, about one-half indicated they have some problems with the form or need adjustments.

The committee also received testimony from the Charitable Gaming Association of North Dakota and from representatives of individual gaming organizations regarding issues facing the charitable gaming industry in the state. According to the testimony, because there has not been any major change in the operation of charitable games in the state since 2001 when the bet limit for the game of twenty-one was increased, the charitable gaming industry is seeing a decrease in activity and is in need of changes. It was suggested that because electronic gaming is easier to audit and control and is a "greener" way to conduct gaming, the state may want to consider a move to more electronic devices for conducting charitable gaming. Other testimony indicated support for changes to the tax structure of charitable gaming as long as there is not an organization that would be penalized by paying an increase in taxes because of these changes. It was also suggested that the state may want to consider increasing the minimum bet in blackjack to \$2 per hand, increasing the number of occasions that an organization can conduct poker events, and allowing electronic variations of existing game types.

Several members of the committee expressed concern that the state should be taxing charitable gaming only in an amount sufficient to cover gaming administration and enforcement expenses. In light of these concerns, the committee considered a bill draft that would have provided for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 58 percent for all organizations and that would have consolidated all taxes into a flat rate of 3.16 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds.

Testimony in explanation of the bill draft indicated that although the bill draft would simplify the gaming tax structure from a progressive tax based upon adjusted gross proceeds to a flat tax of 3.16 percent of gross proceeds, the bill draft was revenue-neutral, and the state would continue to collect about \$15.4 million per biennium in gaming taxes. The testimony indicated that the bill draft would help the smaller organizations, most of which are now paying 4 percent to 5 percent of gross proceeds in gaming taxes. It was noted that about 80 percent of the gaming organizations would see a tax reduction while about 20 percent would see an increase. The testimony indicated that to get the entire industry to support the tax rates in the bill draft, it is likely that the rate would have to be lower than 3.16 percent.

The committee also considered a bill draft that provided for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 60 percent for all organizations and which consolidated all taxes into a

flat rate of 1 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds. Testimony in explanation of the bill draft indicated that based on the current wagering level and average tax rate, each one-half percent decrease in the tax rate on gross proceeds represents a \$1.25 million decrease in tax collected per year, or \$2.5 million per biennium. If the tax rate on gross proceeds were reduced from 3.16 percent, as was reflected in the first bill draft considered by the committee, to 1 percent of gross proceeds, the tax collections would be reduced to \$2.5 million per year, or \$5 million per biennium.

The testimony in explanation of the bill draft also indicated that Section 53-06.1-12, which provides for the deposit of 3 percent of the total taxes collected to be deposited into a gaming tax allocation fund that is allocated to cities and counties for gaming enforcement, would need to be adjusted from 3 percent to 10 percent if it was the committee's intent to continue to return the same amount to the local governments each biennium. According to the testimony, the current tax payback to cities and counties is limited to a maximum of \$510,000 per biennium. How the money that is distributed to the cities and counties is used varies by community. The City of Fargo uses the money to hire a separate employee for gaming enforcement, while other communities use the money to offset law enforcement costs. The committee amended the bill draft to change the percentage in Section 53-06.1-12 from 3 percent to 10 percent.

Testimony in support of the bill draft indicated that a tax rate of 1 percent is very significant for the gaming industry because it provides relief for all size organizations. According to the testimony, the current tax rate has been a burden to most gaming organizations. It was noted that reduction to a 1 percent tax would allow more money to be used for charitable purposes--the reason gaming was established in the state.

Several committee members indicated that the beneficiary of this bill draft will be the charities, which was the initial intent of charitable gaming. One committee member noted that the bill draft does not expand gaming, but rather makes gaming fairer.

Recommendation

The committee recommends Senate Bill No. 2042 relating to charitable gaming taxes and allowable expenses. The bill provides for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 60 percent for all organizations and consolidates all gaming taxes into a flat rate of 1 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds. The bill also increases from 3 percent to 10 percent the amount of the total taxes collected which is deposited into the gaming tax allocation fund.

TESTIMONY IN SUPPORT OF
SENATE BILL NO. 2042
SENATE APPROPRIATIONS
FEBRUARY 8, 2011

Chairman Holmberg, Appropriations Committee members, my name is Marvin Knutson and I am appearing before you today as Vice-President of the Charitable Gaming Association of North Dakota (CGAND) in support of SB 2042. I am the bookkeeper for the Bison Booster Club of Milnor, ND, a small gaming business operating in Ransom and Sargent counties, and I also am serving on the Attorney General's Advisory Board for gambling.

The gaming industry has seen a serious economic decrease in the past couple of years, due to the overall economy of the country. The financial status and the survival of some of the gaming businesses hang by a thread in some locals. In order to stay in business, we all need the additional income generated by the increase to 60% for expenses, but our communities especially need the extra donation money generated by the reduction of the tax rate to 1%.

The following information is part of my testimony to the Interim Judicial Committee at hearings held during 2010. The numbers are taken from the Bison Booster Club of Milnor, ND quarterly reports to the Attorney General's office for the period December 2009-September 2010:

Gross Sales	Adjusted Income	Trust Income	Tax Paid	Bill 2042	Savings	1/4 ending
\$110,769	\$11,292	\$6,980	\$4,312	\$1,108	\$3,204	December 2009
\$ 85,622	\$ 8,856	\$ 5,509	\$ 3,347	\$ 856	\$ 2,491	March 2010
\$ 153,109	\$ 16,129	\$10,116	\$ 6,013	\$ 1,531	\$ 4,482	June 2010
\$ 126,067	\$12,966	\$ 8,046	\$ 4,920	\$1,261	\$ 3,659	September 2010
_____	_____	_____	_____	_____	_____	
	\$49,243	\$30,651	\$18,592			Total

In looking at the above figures, you will note that of the \$49,243 adjusted income, 37.76% is paid in taxes.

The members of CGAND aren't against paying taxes, but the ratio of taxes to money left for charitable requests is way out of line with other North Dakota industries. The original gaming tax was designed to finance the operation of the Gaming Division and help provide funds for law enforcement in cities and counties of the state. The current tax rate pays all of the Gaming Division expenses, for the biennium, in the first two quarters of the biennium, and the balance of the quarters is added to the General Fund. The new formula for calculating taxes will include the Special Fund appropriations for cities/counties and the funding for the Attorney General's Gaming Division, so the only decrease in funding will be in the General Fund, which currently has more money than it needs.

After considering all aspects, we respectfully request that you support your local charities and that you give SB 2042 a DO PASS recommendation.

Thank you for the opportunity to testify, and I would be willing to try to answer any questions.

**Testimony
Senate Bill 2042 – Gaming taxes and allowable expenses
Senate Appropriations Committee
Senator Ray Holmberg, Chairman
February 8, 2010**

Chairman Holmberg, members of the Senate Appropriations Committee, thank you for the opportunity to provide commentary on Senate Bill 2042 – the consolidation of charitable gaming taxes and allowable expenses.

My name is Dianne Sheppard. I am Executive Director for The Arc, Upper Valley in Grand Forks. Our mission is to ensure that children and adults with an intellectual disability have the supports, benefits, and services they need, and are accepted, respected and fully included in their communities.

I am here today in support of Senate Bill 2042.

Charitable gaming has been an important funding source for our programs and services for the past twenty-eight years. Our organization, as well as many other smaller organizations, will benefit from the 1% flat tax on gross proceeds.

It is important to note that the game of 21 has never been taxed on gross proceeds, so if the proposed flat tax goes higher than 1%, those charities that operate gaming sites where the game of 21 is the primary game type, will pay higher gaming taxes.

I would be happy to answer any questions you may have.

Thank you.

Dianne Sheppard
Executive Director

P.O. Box 12420
2500 DeMers Ave
Grand Forks, ND 58208-2420

(701) 772-6191 Office
(701) 772-2195 Fax

thearc@arcuv.com
www.thearcuppervalley.org

SB 2042 Testimony

Ken Karls – Cystic Fibrosis Association of North Dakota

February 8, 2011

Mr. Chairman and members of the Committee, I am here to testify in favor of SB 2042. My name is Ken Karls and I work for the Cystic Fibrosis Association ND. We exist to provide financial, educational and emotional support for North Dakota families who have members with cystic fibrosis. We are an independent entity and are not affiliated with any national or international parent group. We neither apply nor budget for any federal or state government grants. Because we participate in charitable gaming, we are not eligible for support from the United Way.

Our financial support is generated through private individual and corporate contributions, special events and charitable gaming.

I am enclosing an attachment that illustrates our best guess at the difference SB 2042 will make to our net proceeds being transferred to our Trust Fund. The Trust Fund is the money we use to pay for the services we provide to families we help. As you can see, the impact to CFA had SB 2042 been in effect during the past four calendar quarters would have been about \$66,650. That is, we would have paid \$66,650 less in taxes and that amount would have been divided between additional allowable expenses and increased net proceeds under the original bill.

Following the amendment adopted by the Senate Finance and Tax Committee, less than half of the tax reduction will now accrue to the net proceeds and allowable expenses. Although we will still experience the same decrease in taxes under the present bill, almost 55% of the tax reduction dissolves in the modification to the Adjusted Gross Proceeds (AGP). Both the allowable expenses and net proceeds are products of whatever figure represents the Adjusted Gross Proceeds.

The contribution to Gross State Revenues by charitable gaming taxes is not large. While one cannot say it is insignificant to the State of North Dakota, it is extremely significant to charities that provide services to state residents. Any increase in net proceeds transfer, coupled with an increase in allowable expenses will improve the economic viability of our charity and improve the level of service we can provide to our member families. The more we can increase those two numbers, the better will be our position in providing those services.

I urge a Do Pass on this bill. I will attempt to answer any questions you may have relating to my testimony. Thank you.

H

Cystic Fibrosis Association of North Dakota

Present

	Gross Proceeds	AGP	Expenses	Tax Due	Net Proceeds Transfer
03/31/10	\$955,226	\$206,106	\$111,971	\$28,502	\$65,633
06/30/10	\$900,797	\$170,310	\$93,000	\$25,045	\$52,265
09/30/10	\$844,834	\$163,061	\$88,871	\$23,303	\$50,887
12/31/10	\$941,523	\$183,715	\$101,015	\$26,253	\$56,447
Totals	\$3,642,380	\$723,192	\$394,857	\$103,103	\$225,232

SB 2042

	Gross Proceeds	AGP	60% Exp.	Tax Due	Net Proceeds Transfer
03/31/10	\$955,226	\$196,554	\$117,932	\$9,552	\$69,070
06/30/10	\$900,797	\$161,302	\$96,781	\$9,008	\$55,513
09/30/10	\$844,834	\$154,613	\$92,768	\$8,448	\$53,397
12/31/10	\$941,523	\$174,300	\$104,580	\$9,415	\$60,305
Totals	\$3,642,380	\$686,768	\$412,061	\$36,424	\$238,284

Net Effect		-\$36,424	\$17,204	-\$66,679	\$13,052
-------------------	--	-----------	----------	-----------	----------

% of Tax Reduction		54.62%	25.80%		19.57%
---------------------------	--	--------	--------	--	--------

Senate Bill 2042 as amended by Senate Finance and Taxation Committee

Present

	Gross Proceeds	AGP	Expenses	Tax Due	Net Proceeds Transfer
03/31/10	\$955,226	\$206,106	\$111,971	\$28,502	\$65,633
06/30/10	\$900,797	\$170,310	\$93,000	\$25,045	\$52,265
09/30/10	\$844,834	\$163,061	\$88,871	\$23,303	\$50,887
12/31/10	\$941,523	\$183,715	\$101,015	\$26,253	\$56,447
Totals	\$3,642,380	\$723,192	\$394,857	\$103,103	\$225,232

SB 2042

	Gross Proceeds	AGP	60% Exp.	Tax Due	Net Proceeds Transfer
03/31/10	\$955,226	\$206,106	\$123,664	\$9,552	\$72,890
06/30/10	\$900,797	\$170,310	\$102,186	\$9,008	\$59,116
09/30/10	\$844,834	\$163,061	\$97,837	\$8,448	\$56,776
12/31/10	\$941,523	\$183,715	\$110,229	\$9,415	\$64,071
Totals	\$3,642,380	\$723,192	\$433,915	\$36,424	\$252,853

Net Effect	\$0	\$39,058	-\$66,679	\$27,621
% of Tax Reduction	0.00%	58.58%		41.42%

Senate Bill 2042 as originally proposed.

SENATE BILL 2042
SENATE APPROPRIATIONS COMMITTEE
TESTIMONY SUBMITTED BY JANELLE MITZEL
FEBRUARY 8TH, 2011

DEVELOPMENT HOMES INC:

- Nonprofit in Grand Forks providing community based support services to persons with disabilities
- Residential Services including seven groups homes and independent living settings
- Vocational Services including job training and placement
- Family Services including respite care and in-home support
- Approximately 150 children and adults served through all stages of life
- 11th largest employer in Grand Forks, employing approximately 320 people

GAMING TRUST REVENUE:

- 2008 - 2010 provided upfront and matching dollars to support federal HUD housing grants and programs
- Provides financial funds necessary to supplement new projects, such as bricks & mortar
- Specialized adaptive equipment for persons served
- Urgent/Crisis Care needs for persons served
- Basic Care Needs, such as eyeglasses, shoes, clothing
- Specialized training for professional staff including nurses and social workers

TAXES:

- In 2009 DHI paid \$185,000 in gaming taxes to the state of North Dakota.
- In 2010 DHI paid \$177,000 in gaming taxes to the state of North Dakota.
- In recent years gaming tax liabilities has far exceeded net profits for the charities.

DHI would appreciate your support today to continue providing critical services to the most vulnerable citizens of our state.

b

CHARITABLE GAMING TAX COLLECTION

Previous Biennium	\$20.5 million
Current Biennium	\$15.4 million(est.)
New tax at 1% of Gross Sales	\$5 million(est.)
Gaming Division Operating Costs	\$1.8 million

- Currently the charitable gaming taxes collected in one quarter funds the biennium general fund appropriation for the Gaming Division based on the current tax structure.
- Attorney General's Gaming Division costs include special fund appropriations of \$510,000 for cities/counties.

DEVELOPMENT HOMES INC.

2009 Taxes Paid	\$185,000	Tax at 1%	\$70,000	Savings	\$115,000
2010 Taxes Paid	\$177,000	Tax at 1%	\$72,000	Savings	\$105,000

Increase Allowable Expenses to 60% of Adjusted Gross Proceeds.

Current allowable expense percentage is approx. 51%. The vast majority of organizations cannot operate gaming under these percentages and have to rely on other sources of revenue to supplement gaming operating costs.

TESTIMONY IN SUPPORT OF SB 2042
SENATE APPROPRIATIONS COMMITTEE
February 8, 2011

Chairman Holmberg, Members of the Senate Appropriations Committee ... My name is Arlette Preston. I am a current member of the Fargo Plains Art Museum Board of Directors. I am here, as a representative of that Board, to voice our support for SB 2042.

The Plains Art Museum has seen a gradual decline in revenue from gaming over the past 8-10 years, with a sharp decline in the past two years. The rapid decline experienced in the more recent years, likely caused by the nation-wide recession, has presented great challenges for the Museum. From fiscal year end 2007 to 2011, net revenue from charitable gaming has decreased by 41%. At the same time, 10.5 positions have been cut, decreasing staff costs by 23%. We can't go any further with staff cuts and still be able to meet the mission of the organization.

The building which houses the Museum is one of the first re-developed buildings in downtown Fargo. It has been an anchor for the subsequent renaissance of our downtown. The Plains Art Museum is extremely valuable to our continuing downtown property tax base growth as it draws students and patrons to its exhibits and events. The community cannot afford to lose the Museum.

The tax relief proposed in SB 2042 will help us, and every other charitable gaming organization in the state. As of December, 2010, the YTD net income transferred to the Museum from our charitable gaming was \$194,397. The total gaming tax paid to the State of ND was \$165,934 for the same period. The savings provided by this bill will help to stabilize this very important community resource.

Thank you for your time and I am willing to answer questions you may have.

17

Appropriations Committee
History of Gaming Taxes
February 8, 2011

1977

Gaming tax established at 3% of adjusted gross proceeds.

1979

Gaming tax rate increased from 3% to 5% of adjusted gross proceeds.

1983

The gaming tax rate changed from 5% of adjusted gross proceeds to 5% on the first \$600,000 of adjusted gross proceeds and 20% on adjusted gross proceeds over \$600,000 per quarter.

1989

The gaming tax rate was changed to 5% up to \$200,000, 10% on \$200,000 up to \$400,000, 15% on \$400,000 up to \$600,000, and 20% on amounts over \$600,000 on adjusted gross proceeds per quarter. In addition, a 2% excise tax was imposed on pull tab gross proceeds and sales tax was imposed on bingo cards.

1993

The excise tax on pull tab gross proceeds was increased from 2% to 4½%.

2001

The 4½% excise tax on pull tab gross proceeds was eliminated for organizations whose gross proceeds did not exceed \$4,000 for a quarter.

2007

Sales tax was no longer imposed on bingo cards but it was replaced with a 3% excise tax on the gross sales of bingo cards.

2009

The 4½% excise tax on pull tab gross proceeds was reduced to 3%.





**Cystic Fibrosis
Association**
of North Dakota

921 SOUTH 9TH STREET SUITE 115
PO BOX 456
BISMARCK, NORTH DAKOTA 58502-0456
(701) 222-3998
FAX (701) 222-2821
www.cfanorthdakota.com
Not Affiliated with Cystic Fibrosis Foundation

*Submitted
after the
hearing*

MEMO

TO: SENATE APPROPRIATIONS COMMITTEE
FROM: KEN KARLS, CYSTIC FIBROSIS ASSOC. ND
SUBJECT: MY TESTIMONY SB 2042
DATE: FEBRUARY 10, 2011

Ken Karls

If you will recall my testimony on February 7, 2011 **in favor of SB 2042** as it appeared before you, I told you that I thought the original version of the bill was better because it left more revenue from the tax reduction at the disposal of the charity.

Unfortunately, I made an error in my calculation on the spread sheet which in effect, subtracted the tax from the Adjusted Gross Proceeds twice.

Although the newly amended version of the bill (11.0252.03000 First Engrossment) moves more of the money to the Net Proceeds and less to the 60% allowable expense side of the equation, it does not ultimately reduce the amount of revenue to the charity as I had feared.

Please accept my apologies for confusing the issue. I will take more time to review my spreadsheets before I again appear before your committee.

Testimony #1

Testimony Regarding Change in Gaming Tax Structure

March 9, 2011

Harvey Peterson, Beach, North Dakota

My name is Harvey Peterson from Beach. I am Commander of Harley Salzman American Legion Post #5, Gaming license G-68. We have one gaming site - our Legion Club - where we conduct once weekly Bingo, weekend 21 and 6 day-per-week pull tabs with one game jar and, since December, a pull tab dispensing device. I am a member of our Charitable Gaming Committee with responsibilities that include volunteering at our Friday Bingo sessions, ordering supplies and maintaining inventory, maintain accounts, overseeing our pull tab and 21 operations, perform daily, weekly and other audits, and review security tapes. Believe me, this is just a partial list of my duties as we try to be in compliance with charitable gaming requirements.

I am not here to complain about the work load because I understand why we have the process. I am here to speak in favor of the proposal we are discussing today. I will get to the point.

Ours is a small operation. In the 4 quarters ending September 2010 we had gross wagers from all sources of about \$750,00 (\$755,564), we paid out prizes of almost \$600,000 (\$594,749), and had adjusted gross receipts of about \$150,000 (\$152,815).

In the same 4 quarters we paid \$27,156 in taxes leaving \$38,288 available for our Charitable Trust. Under the proposed change the amount we would pay in taxes would be reduced by \$19,600.

If this change is enacted, it would allow an additional \$15,281 to be placed into our Trust and \$4,319 would be available for allowable expenses by the Post. The point I want to emphasize to you today is that if this legislation is enacted, 78% of the taxes we send to the Attorney General every quarter would then be available for charitable purposes in our area. Only 22% would be available to us as allowable expenses. The big winner obviously would be the charitable uses for which gaming was established.

We urge your support of the proposed change in tax structure.

Thank you for the opportunity to speak to you today.

Testimony #2 p. 1

TESTIMONY IN SUPPORT OF
SENATE BILL NO. 2042
HOUSE FINANCE AND TAXATION
MARCH 9, 2011

Chairman Belter, Finance and Taxation Committee members, my name is Marvin Knutson and I am appearing before you today as Vice-President of the Charitable Gaming Association of North Dakota (CGAND) in support of SB 2042. I am the bookkeeper for the Bison Booster Club of Milnor, ND, a small gaming business operating in Ransom and Sargent counties, and I also am serving on the Attorney General's Advisory Board for gambling.

The gaming industry has seen a serious economic decrease in the past couple of years, due to the overall economy of the country. The financial status and the survival of some of the gaming businesses hang by a thread in some locals. In order to stay in business, we all need the additional income generated by the increase to 60% for expenses, but our communities especially need the extra donation money generated by the reduction of the tax rate to 1%.

The following information is part of my testimony to the Interim Judicial Committee at hearings held during 2010. The numbers are taken from the Bison Booster Club of Milnor, ND quarterly report to the Attorney General's office for the quarter ending March 2010:

Gross	Adjusted	Trust	Tax	Bill	Savings	1/4 ending
Sales	Income	Income	Paid	2042		
\$ 85,622	\$ 8,856	\$ 5,509	\$ 3,347	\$ 856	\$ 2,491	March 2010
_____	_____	_____	_____	_____	_____	
		\$5,509	\$3,347			Total

In looking at the above figures, you will note that of the \$8,856 adjusted income, 37.79% is paid in taxes.

The members of CGAND aren't against paying taxes, but the ratio of taxes to money left for charitable requests is way out of line with other North Dakota industries. The original gaming tax was designed to finance the operation of the Gaming Division and help provide funds for law enforcement in cities and counties of the state. The current tax rate pays all of the Gaming Division expenses, for the biennium, in the first two quarters of the biennium, and the balance of the quarters is added to the General Fund. The new formula for calculating taxes will include the Special Fund appropriations for cities/counties and the funding for the Attorney General's Gaming Division, so the only decrease in funding will be in the General Fund, which currently has more money than it needs.

After considering all aspects, we respectfully request that you support your local charities and that you give SB 2042 a **DO PASS** recommendation.

Thank you for the opportunity to testify, and I would be willing to try to answer any questions.

EXCERPT FROM INTERIM JUDICIARY COMMITTEE REPORT REGARDING ENGROSSED SENATE BILL NO. 2042

PROVIDED BY: VONETTE RICHTER, LEGISLATIVE COUNCIL

MARCH 9, 2011

CHARITABLE GAMING STUDY

Senate Concurrent Resolution No. 4028 directed a study of the charitable gaming and pari-mutuel racing laws to determine whether the laws regarding taxation, limitations, administration, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate. The legislative history regarding this resolution indicated that a comprehensive review of the state's charitable gaming laws has not been conducted since the 1993-94 interim and that a thorough review of laws governing charitable gaming was necessary to ensure that laws regarding taxes, expense limitations, enforcement, conduct, and play of charitable games are adequate to govern charitable gaming under current conditions.

Under Chapters 53-06.1 (Games of Chance) and 53-06.2 (Pari-Mutuel Horse Racing), certain charitable organizations are permitted to conduct a limited array of games of chance and horse racing events.

Testimony and Committee Considerations

The committee received testimony and information from the Gaming Division of the Attorney General's office, charitable organizations, gaming vendors, members of the Charitable Gaming Association of North Dakota, the executive director and members of the Racing Commission, and other individuals involved in horse racing.

Charitable Gaming Taxes and Allowable Expenses

The committee reviewed extensive information submitted by the Gaming Division of the Attorney General's office with regard to all aspects of the charitable gaming industry. According to the testimony, although the charitable gaming industry in North Dakota continues to be fairly healthy, there has been a decrease in the number of licensed gaming organizations over the years. It was noted that without periodic changes to the play of games, gaming activity tends to go flat. It was also noted that expenses continue to rise for the charities, especially with the increases in the minimum wage. It was suggested that it may be time to review the laws relating to the gaming tax structure and the allowable expense structure.

In an analysis of gaming activity for the calendar year ending December 31, 2008, the committee received testimony that the amount wagered on charitable games for that year was \$265,805,193, an amount that represented a 2.9 percent increase or \$7,539,813 from calendar year 2007. It was reported that all major game types had increases in the amount wagered in 2008, including pull tab dispensing devices, which increased

5.9 percent or \$3,125,850; twenty-one, which increased 2.6 percent or \$1,955,784; pull tab jars, which increased 2.5 percent or \$2,158,677; and bingo, which increased .9 percent or \$300,600. Poker had the largest percentage decrease of 37.5 percent or \$445,576 during calendar year 2008. Approximately 79 percent of the amount collected from charitable gaming goes back to the players as prizes. It was noted that the estimated \$17.3 million that will be deposited in the general fund from charitable gaming taxes in the current biennium makes the state of North Dakota the single largest recipient of proceeds from charitable gaming. The testimony also indicated that the old technology of stamps on pull tabs is another area to consider changing. It was noted that the North Dakota charitable gaming industry is locked into this old technology because the requirements are set in statute. According to the testimony, the gaming industry has evolved, and the statutes have not kept pace. It was noted that there are gaming organizations that have been in the gaming business for decades but are unable to make a profit for their charity. For those gaming organizations for which the expenses exceed the profits, the gaming organization is forced to pay the charity from other sources within the organization.

The committee also received testimony regarding biennial gaming tax collection. The state collects about \$15.4 million in gaming taxes per biennium. The Attorney General's general fund appropriation for the Gaming Division is about \$1.8 million per biennium. Of that amount, approximately \$510,000 is paid to local law enforcement for gaming enforcement and approximately \$6,000 is appropriated for the State Gaming Commission's expenses. The state collects about \$80,000 from gaming stamps and is reimbursed about \$247,000 from the tribes for casino inspections. It was noted that the amount of taxes collected in one quarter, or about \$1.9 million, is more than enough to cover the state's gaming administration costs for the biennium.

As a result of a survey of gaming organizations conducted by the Gaming Division of the Attorney General's office, the committee received testimony regarding recommendations those organizations may have for changes. Of the 326 licensed gaming organizations in the state, 48 responded to the survey, or approximately 15 percent. The survey results indicated that 51 percent of the gaming organizations responding do not consider the gaming tax on adjusted gross proceeds to be fair and appropriate, 59 percent would prefer a flat tax based on a single taxable amount rather than a progressive tax based on periodic increases, 72 percent would support a single percentage expense allowance on adjusted gross proceeds, and 51 percent would support a single expense allowance

Testimony #3 p. 2

even if it slightly decreased the organization's expense amount in some quarters if the entire process was simplified. It was noted that although 72 percent of respondents indicated that the current gaming tax return is easy to prepare, about one-half indicated they have some problems with the form or need adjustments.

The committee also received testimony from the Charitable Gaming Association of North Dakota and from representatives of individual gaming organizations regarding issues facing the charitable gaming industry in the state. According to the testimony, because there has not been any major change in the operation of charitable games in the state since 2001 when the bet limit for the game of twenty-one was increased, the charitable gaming industry is seeing a decrease in activity and is in need of changes. It was suggested that because electronic gaming is easier to audit and control and is a "greener" way to conduct gaming, the state may want to consider a move to more electronic devices for conducting charitable gaming. Other testimony indicated support for changes to the tax structure of charitable gaming as long as there is not an organization that would be penalized by paying an increase in taxes because of these changes. It was also suggested that the state may want to consider increasing the minimum bet in blackjack to \$2 per hand, increasing the number of occasions that an organization can conduct poker events, and allowing electronic variations of existing game types.

Several members of the committee expressed concern that the state should be taxing charitable gaming only in an amount sufficient to cover gaming administration and enforcement expenses. In light of these concerns, the committee considered a bill draft that would have provided for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 58 percent for all organizations and that would have consolidated all taxes into a flat rate of 3.16 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds.

Testimony in explanation of the bill draft indicated that although the bill draft would simplify the gaming tax structure from a progressive tax based upon adjusted gross proceeds to a flat tax of 3.16 percent of gross proceeds, the bill draft was revenue-neutral, and the state would continue to collect about \$15.4 million per biennium in gaming taxes. The testimony indicated that the bill draft would help the smaller organizations, most of which are now paying 4 percent to 5 percent of gross proceeds in gaming taxes. It was noted that about 80 percent of the gaming organizations would see a tax reduction while about 20 percent would see an increase. The testimony indicated that to get the entire industry to support the tax rates in the bill draft, it is likely that the rate would have to be lower than 3.16 percent.

The committee also considered a bill draft that provided for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 60 percent for all organizations and which consolidated all taxes into a

flat rate of 1 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds. Testimony in explanation of the bill draft indicated that based on the current wagering level and average tax rate, each one-half percent decrease in the tax rate on gross proceeds represents a \$1.25 million decrease in taxes collected per year, or \$2.5 million per biennium. If the tax rate on gross proceeds were reduced from 3.16 percent, as was reflected in the first bill draft considered by the committee, to 1 percent of gross proceeds, the tax collections would be reduced to \$2.5 million per year, or \$5 million per biennium.

The testimony in explanation of the bill draft also indicated that Section 53-06.1-12, which provides for the deposit of 3 percent of the total taxes collected to be deposited into a gaming tax allocation fund that is allocated to cities and counties for gaming enforcement, would need to be adjusted from 3 percent to 10 percent if it was the committee's intent to continue to return the same amount to the local governments each biennium. According to the testimony, the current tax payback to cities and counties is limited to a maximum of \$510,000 per biennium. How the money that is distributed to the cities and counties is used varies by community. The City of Fargo uses the money to hire a separate employee for gaming enforcement, while other communities use the money to offset law enforcement costs. The committee amended the bill draft to change the percentage in Section 53-06.1-12 from 3 percent to 10 percent.

Testimony in support of the bill draft indicated that a tax rate of 1 percent is very significant for the gaming industry because it provides relief for all sizes of organizations. According to the testimony, the current tax rate has been a burden to most gaming organizations. It was noted that reduction to a 1 percent tax would allow more money to be used for charitable purposes--the reason gaming was established in the state.

Several committee members indicated that the beneficiary of this bill draft will be the charities, which was the initial intent of charitable gaming. One committee member noted that the bill draft does not expand gaming; but rather makes gaming fairer.

Recommendation

The committee recommends Senate Bill No. 2042 relating to charitable gaming taxes and allowable expenses. The bill provides for the consolidation of the allowable expense limit from a graduated rate to a flat rate of 60 percent for all organizations and consolidates all gaming taxes into a flat rate of 1 percent of gross proceeds rather than a graduated tax on adjusted gross proceeds. The bill also increases from 3 percent to 10 percent the amount of the total taxes collected which is deposited into the gaming tax allocation fund.

SB 2042 Testimony

Ken Karls – Cystic Fibrosis Association of North Dakota

House Finance and Taxation Committee

March 9, 2011

Mr. Chairman and members of the Committee, I am here to testify in favor of SB 2042. My name is Ken Karls and I work for the Cystic Fibrosis Association ND. We exist to provide financial, educational and emotional support for North Dakota families who have members with cystic fibrosis. We are an independent entity and are not affiliated with any national or international parent group. We neither apply nor budget for any federal or state government funding. Because we participate in charitable gaming, we are not eligible for support from the local United Way.

Our financial support is generated through private individual and corporate contributions, special events and charitable gaming.

I am enclosing an attachment that illustrates our best guess at the difference SB 2042 will make to the net proceeds being transferred to our Trust Fund. The Trust Fund is the money we use to pay for the services we provide to families we help. As you can see, the impact to CFA had SB 2042 been in effect during the past four calendar quarters would have been just under \$67,000. That is, we would have paid \$67,000 less in taxes and that amount would have been divided between additional allowable expenses and increased net proceeds.

The original rationale for establishing a tax on charitable gaming was to pay for enforcement. Even though the taxes paid by charities represent an amount many times the cost of gaming enforcement, the contribution to Gross State Revenues by charitable gaming taxes is not large. While not insignificant to the State of North Dakota, it is extremely significant to charities that provide services to state residents. The additional income made available to CFA will do much to improve the economic viability of our charity and improve the level of service we can provide to our member families.

I urge a Do Pass on this bill. I will attempt to answer any questions you may have relating to my testimony. Thank you.

Cystic Fibrosis Association of North Dakota

Present

	Gross Proceeds	AGP	Expenses	Tax Due	Net Proceeds Transfer
03/31/10	\$955,226	\$206,106	\$111,971	\$28,502	\$65,633
06/30/10	\$900,797	\$170,310	\$93,000	\$25,045	\$52,265
09/30/10	\$844,834	\$163,061	\$88,871	\$23,303	\$50,887
12/31/10	\$941,523	\$183,715	\$101,015	\$26,253	\$56,447
Totals	\$3,642,380	\$723,192	\$394,857	\$103,103	\$225,232

SB 2042

	Gross Proceeds	AGP	60% Exp.	Tax Due	Net Proceeds Transfer
03/31/10	\$955,226	\$196,554	\$117,932	\$9,552	\$78,622
06/30/10	\$900,797	\$161,302	\$96,781	\$9,008	\$64,521
09/30/10	\$844,834	\$154,613	\$92,768	\$8,448	\$61,845
12/31/10	\$941,523	\$174,300	\$104,580	\$9,415	\$69,720
Totals	\$3,642,380	\$686,768	\$412,061	\$36,424	\$274,707

Net Effect - \$36,424 \$17,204 -\$66,679 \$49,475

% of Tax Reduction 25.80% 74.20%

Senate Bill 2042 as amended by Senate Finance and Taxation Committee

Testimony # 5

Finance and Taxation Committee History of Gaming Taxes March 9, 2011

1977

Gaming tax established at 3% of adjusted gross proceeds.

1979

Gaming tax rate increased from 3% to 5% of adjusted gross proceeds.

1983

The gaming tax rate changed from 5% of adjusted gross proceeds to 5% on the first \$600,000 of adjusted gross proceeds and 20% on adjusted gross proceeds over \$600,000 per quarter.

1989

The gaming tax rate was changed to 5% up to \$200,000, 10% on \$200,000 up to \$400,000, 15% on \$400,000 up to \$600,000, and 20% on amounts over \$600,000 on adjusted gross proceeds per quarter. In addition, a 2% excise tax was imposed on pull tab gross proceeds and sales tax was imposed on bingo cards.

1993

The excise tax on pull tab gross proceeds was increased from 2% to 4½%.

2001

The 4½% excise tax on pull tab gross proceeds was eliminated for organizations whose gross proceeds did not exceed \$4,000 for a quarter.

2007

Sales tax was no longer imposed on bingo cards but it was replaced with a 3% excise tax on the gross sales of bingo cards.

2009

The 4½% excise tax on pull tab gross proceeds was reduced to 3%.

Testimony #6

**TESTIMONY IN SUPPORT OF SB 2042
HOUSE FINANCE & TAXATION COMMITTEE
March 9, 2011**

Chairman Belter, Members of the House Finance and Taxation Committee ... My name is Arlette Preston. I am a current member of the Fargo Plains Art Museum Board of Directors. I am here, as a representative of that Board, to voice our support for SB 2042.

The Plains Art Museum has seen a gradual decline in revenue from gaming over the past 8-10 years, with a sharp decline in the past two years. The rapid decline experienced in the more recent years, likely caused by the nation-wide recession, has presented great challenges for the Museum. From fiscal year end 2007 to 2011, net revenue from charitable gaming has decreased by 41%. At the same time, 10.5 positions have been cut, decreasing staff costs by 23%. We can't go any further with staff cuts and still be able to meet the mission of the organization.

The building which houses the Museum is one of the first re-developed buildings in downtown Fargo. It has been an anchor for the subsequent renaissance of our downtown. The Plains Art Museum is extremely valuable to our continuing downtown property tax base growth as it draws students and patrons to its exhibits and events. The community cannot afford to lose the Museum.

The tax relief proposed in SB 2042 will help us, and every other charitable gaming organization in the state. As of December, 2010, the YTD net income transferred to the Museum from our charitable gaming was \$194,397. The total gaming tax paid to the State of ND was \$165,934 for the same period. The savings provided by this bill will help to stabilize this very important community resource.

Thank you for your time and I am willing to answer questions you may have.

Mary,
I mis anders food Was this morning
not knowing we ended the hearing. I planned
to and was supposed to read this into the
record. Please do whatever you need to do
to enter this into the record.
Rep. Steve Zaiser