



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government; ensure lower taxes; safeguard individual liberty; promote personal responsibility; empower families; maintain public security:**

The bill implements Article X, Section 23 of the Florida Constitution, which authorizes slot machines within certain pari-mutuel facilities located in Broward and Miami-Dade Counties, contingent upon approval by local referendum.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background Information**

As a matter of constitutional law<sup>1</sup> and public policy, gambling has generally been prohibited in Florida. Chapter 849, Florida Statutes, provided the codification of this general prohibition policy and contains specific prohibitions against certain types of gambling and restrictions on possession of certain gambling devices for use in those activities e.g. roulette wheels, crap tables, slot machines, etc.

Certain other activities are prohibited by statute that, while not gambling in the normal sense of the word, have been construed by the Legislature to be gambling. For example, ss. 849.091 and 849.0915, Florida Statutes, define chain letters, pyramid sales schemes and referral selling schemes as lotteries prohibited by law.

Chapters 24, 550 and 849 contain specific exceptions to this general prohibition against gambling and authorize gambling activities such as pari-mutuel wagering on horse and greyhound racing and jai alai games, cardrooms, bingo, and certain penny-ante card and domino games.

##### **Pari-mutuel Wagering**

The pari-mutuel wagering industry in Florida was once a gaming entertainment monopoly. Since the authorization of pari-mutuel wagering in 1931, Florida's pari-mutuel industry has developed into one of the largest and arguably the most complex in the country. Florida allows pari-mutuel wagering on thoroughbred and standardbred horses, greyhound racing, and jai alai games. From time to time, quarterhorse racing has also been conducted. Florida is the only state in the nation that conducts all these forms of pari-mutuel activities. During FY 2003-04 there were 30 pari-mutuel permitholders operating at 27 pari-mutuel facilities in the state: 18 greyhound permits; seven jai alai permits; four thoroughbred permits, and one harness permit.

Despite the introduction of simulcast wagering, numerous tax reductions and credits, and cardrooms, the pari-mutuel industry has seen a consistent decrease in revenue collections and attendance. Total state revenue has decreased from \$97 million in FY 1994-95 to \$34 million in

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<sup>1</sup> Article X, Section 7 of the State Constitution prohibits lotteries, other than the types of pari-mutuel pools authorized by general law on the effective date of the constitutional revision. Those activities understood to be pari-mutuel [horse and dog racing, jai ali games and bingo] were recognized as lotteries but if in existence and lawful under case law or legislative statutes prior to January 7, 1969, were grandfathered in as exceptions to lottery prohibition.

FY 2003-04 and attendance at pari-mutuel events has decreased from 10 million in FY 1994-95 to 2.8 million in FY 2003-04.<sup>2</sup>

The industry now faces competition for discretionary entertainment dollars from a large array of other gambling venues: Indian gambling at several locations in Florida, unregulated Internet gambling, numerous gambling vessels, and the state-operated lottery.

### **Bingo, Cardrooms, and Raffles**

Chapter 849, F.S., sets the parameters under which bingo, cardrooms, and raffles may be conducted.

Bingo was authorized in 1967 to provide charitable, nonprofit and veterans' organizations a means to raise money for their charitable projects and activities. The statute establishes limits on the number of jackpots and the number of bingo sessions that may be conducted. Bingo may also be played by mobile home and condominium associations.

Pari-mutuel permit holders are authorized to operate cardrooms during their authorized meet. Initially capped at a \$10 pot limit, the cardroom statute was amended in 2003 to allow for a maximum bet of \$2 with no more than three raises in any round of betting. Cardroom receipts are taxed at 10 percent of monthly gross receipts and an admission tax equal to 15 percent of the admission charge is also imposed.

In a strict sense of the word, raffles are lotteries. Section 849.0935, F.S., allows charitable and nonprofit organizations, which are exempt from federal income taxation pursuant to s. 501(c)(3) of the Internal Revenue Code to conduct drawings by chance for fundraising purposes. The Legislature passed s. 849.0935, F.S., in 1984, as an exception to the general prohibition against the conducting of a lottery. A key feature of this exception is that no donation or other payment can be required as a condition of participating in the raffle.

### **Cruise Ship Gambling**

Florida has fourteen deepwater ports and numerous marinas and docks, both public and private, from which ocean going vessels of all sizes operate. Many of these vessels offer cruises, of varying duration, to foreign ports. Eighteen [with another scheduled to begin operations] offer cruises which have no foreign port destination, but rather take passengers on cruises to the high seas [beyond the three-mile limit on the Atlantic coast and 9.1 miles on the Gulf coast] which last only several hours. These cruises are often referred to as *cruises-to-nowhere* or *day cruises*. In addition, a number of larger vessels operating from state ports engage in gambling activities when the vessels are outside of the territorial waters of the state.

Gambling is among the various entertainment options available on the larger vessels. It is typically the primary entertainment, other than food and beverage service, available on the smaller vessels.

On the Federal level, gambling vessels are regulated by the provisions the "Johnson Act."<sup>3</sup> Before 1992, the Johnson Act provided a general ban on maritime gambling. Because foreign-flagged vessels were excepted, pursuant to the U. S. Justice Department's interpretation of the provision, U.S.-flagged vessels were operating at a competitive disadvantage. In order to allow U.S.-flagged vessels to compete with their foreign counterparts, the Johnson Act was amended in 1992. The amendment removed transport and possession restrictions regarding gambling devices, provided that those devices were not used while the vessel was within the boundaries of

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<sup>2</sup> 73<sup>rd</sup> Annual Report Fiscal Year 2003-2004, Division of Pari-Mutuel Wagering, Florida Department of Business and Professional Regulation, December 2004, page 14.

<sup>3</sup> Gambling Devices Transportation Act, 15 U.S.C. Sections 1171-1178.

a state or possession of the United States.<sup>4</sup> Furthermore, the Johnson Act no longer prohibits the use of gambling devices outside of state boundaries, unless the ship is on a cruise-to-nowhere and the state in which that cruise begins and ends has enacted a statute “the terms of which prohibit use on that voyage.”<sup>5</sup>

## Internet Gambling

Gambling over the internet is illegal in Florida; however, policing the internet is technically difficult and complicated by jurisdictional differences. Some site operators have been prosecuted under the 1961 Wire Communications Act but case law on internet gambling is not well developed at this time. According to the General Accounting Office there are approximately 1,800 internet gambling operations, most of which are based outside of the United States. Gross gambling revenues (wagers minus customer winnings) from Internet gambling were estimated to be approximately \$4 billion nationwide for 2002. According to an industry study, estimates of internet gambling are subject to a high degree of uncertainty and may be underestimated.<sup>6</sup>

The island nation of Antigua filed a challenge before the World Trade Organization [WTO] in 2003 alleging that U.S. restrictions on internet gambling violated trade commitments the United States made as a member of the 148-nation Organization. In November 2004, the WTO issued a report agreeing that the ban represented an unfair trade barrier. According to the U. S. Trade Representative’s Office, Washington is prepared to vigorously contest the ruling before the WTO’s seven-member appeals body.

## Indian Gambling

Indian tribes are sovereign nations and, therefore, free from most federal and state governmental control. State laws, including those regarding gambling activities, do not generally apply to Indians or Indian lands without the consent of Congress. A significant expansion of Indian gambling was realized following passage of the Indian Gaming Regulatory Act<sup>7</sup> [IGRA] by Congress in 1988. IGRA provides that a tribe may only be engaged in those same type gambling activities as are authorized by law in that state. For example, if a state authorizes penny-ante poker, the tribes can, likewise, conduct poker; if the state specifically prohibits wagering on all card games, the tribe cannot conduct wagering on card games.

IGRA identifies three classes of gambling on Indian lands:

**Class I** includes social games and traditional and ceremonial games which may be played for prizes of minimal value. This type of gambling is under the exclusive jurisdiction of the tribes.

**Class II** includes bingo, pull tabs, and games similar to bingo, plus non-banking card games unless they are otherwise prohibited by state law. Class II gaming does not include any banking card games, including baccarat, chemin de fer, or blackjack, or electronic or electromechanical facsimiles of any games of chance or slot machines of any kind. Class II games may, however, utilize “electronic, computer or other technologic aids.” Class II gambling is subject to the provisions of IGRA and oversight by the National Indian Gaming Commission.

**Class III** includes all other types of gambling, including house-banked card games, slot machines, pari-mutuel racing and jai alai. Electronic games of chance, such as video poker, are also considered Class III games.

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<sup>4</sup> See s. 1175(b)(1)(A)-(B).

<sup>5</sup> See s. 1175(b)(2)(A).

<sup>6</sup> *The Economic and Fiscal Impacts of “Slot Machines” in Miami-Dade and Broward County Pari-Mutuel Facilities*, Dr. Robert Cruz, August 2004.

<sup>7</sup> 25 U.S.C, chapter 29

The distinction between Class II and Class III games remains unclear as there is no “bright line test” to distinguish the two. As technology evolves, the distinction between the two will likely be further blurred.

According to IGRA, a tribe may legally conduct Class III gambling when it reaches agreement with a state under a State-Tribal Compact outlining the legal framework of the agreement. The State of Florida and its Indian Nations have been unable to reach agreement on a State-Tribal Compact. The Seminole Nation initiated negotiations on a gaming compact with the state and, when the tribe felt the state was not negotiating in good faith, filed suit in federal court.<sup>8</sup> The tribe won in the federal district court but lost in January 1994 in appellate court. While the appeals court upheld a state's sovereign immunity against suits, it also said a tribe could appeal to the Secretary of the Interior if the immunity defense prevented a tribe from negotiating a compact with a state. The case was reviewed by the U.S. Supreme Court, which rendered its opinion in March 1996. Basically, the court said that an Indian tribe could not sue a state in Federal court for an alleged failure of the state to negotiate a compact in good faith, i.e., the court found the states immune from suit under the 11th Amendment.

Left unanswered by the Court is the question of how Indian tribes are to pursue a remedy for a state's failure to negotiate in good faith. It is particularly unclear whether Congress must readdress the issue in new legislation or whether the Secretary of the Interior may unilaterally determine a tribe's right to engage in casino gaming within a particular state.

Apparently adhering to the belief that the Secretary of the Interior had the authority to do so, in April of 1999, rules were promulgated by the Department of the Interior, which would allow the licensing of Indian Class III gaming without a state's consent. Florida's Attorney General challenged the Secretary's authority for promulgating such rules in Florida's Northern District Federal Court. Currently, that case is pending, having been held in abeyance by the Court until such time as the Department of the Interior was actually poised to license a Florida tribe to engage in Class III gaming pursuant to the new rules. The administrative licensing process, upon which further action in the case turns, has also stalled.

The Seminole and Miccosukee Tribes currently operate tribal casinos in Broward, Collier, Glades, Hillsborough, Miami-Dade and Pasco Counties where they offer gambling on various card games, bingo, and electronic bingo games. These electronic bingo games have been opposed by the state as unauthorized Class III games but have been classified by the National Indian Gaming Commission, an independent agency within the U. S. Department of the Interior responsible for implementing the Indian Gaming Regulatory Act, as Class II machines.

### **Border State Gambling**

Louisiana and Mississippi offer riverboat and shore-side casino gambling which are aggressively marketed to Floridians. Statistics on the number of Floridians that travel to those states to gamble at casinos is not readily available.

Currently, the State of Georgia offers the only border state lottery competition. The State of Georgia also participates in the “Big Game” lotto which is a multi-state, high-odds game with a beginning jackpot of \$5 million and a keno-styled game called “Quick Cash.” As a practical matter, competition from the Georgia Lottery is confined to certain border retailers.

### **Constitutional Amendments**

Article X, Section 7 of the State Constitution prohibits lotteries “other than the types of pari-mutuel pools authorized by law” as of the effective date of the constitutional revision [1968]. The

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<sup>8</sup> *Seminole Tribe of Fla. v. Florida*, 517 U.S.#44

recent adoption of two constitutional amendments has significantly altered the scope of gambling in the State of Florida.

### **Article X, Section 15 - State-Operated Lottery**

Adopted by the voters of the state in 1986, Article X, Section 15, authorized state-operated lotteries. The Florida Lottery was established by the Legislature in 1987, and codified as Chapter 24, F.S., in order to implement Article X, Section 15 of the State Constitution. The Department of the Lottery was also created at that time. The Lottery operates a number of on-line and instant ticket games and generated nearly \$1.2 Billion dollars for the Educational Enhancement Trust Fund for FY 2003-04.

Section 24.121, Florida Statutes, requires that as nearly as practical, at least 50 percent of the gross revenue from the sale of on-line tickets and variable percentages of the gross revenue from instant tickets are to be returned to the public in the form of prizes. Each fiscal year, at least 39 percent of the gross revenue from the sale of on-line lottery tickets is deposited into the Educational Enhancement Trust Fund. Revenues transferred to the EETF shall be reserved as needed and used to meet the requirements of the documents authorizing the bonds issued by the state pursuant to ss. 1013.68, 1013.70, or 1013.737 or distributed to school districts for the Classrooms First Program as provided in s. 1013.68. Debt service payable on bonds issued by the state under these statutory provisions shall be payable from and is secured by a first lien on the first lottery revenues transferred to the EETF in each fiscal year.

### **Article X, Section 23 - Slot Machines**

Amendment 4 to the State Constitution was approved by the voters at the November 2004 General Election and the election results were formally certified by the Elections Canvassing Commission on November 14, 2004.

Passage of Amendment 4 authorized the governing bodies of Broward and Miami-Dade Counties to hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed pari-mutuel facilities that have conducted live racing or games in that county during each of the last two calendar years before the effective date of the Constitutional Amendment [2002 and 2003].

Article X, Section 23, Florida Constitution reads as follows:

#### **SECTION 23. Slot machines.--**

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax

slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become effective when approved by vote of the electors of the state.

Both Broward and Miami-Dade Counties held local referendums on whether to authorize slot machines in their respective counties on March 8, 2005. Voters in Broward County approved the measure while voters in Miami-Dade County voted against authorizing slot machines at pari-mutuel facilities in that county. Voters in Miami-Dade County may vote on this issue two years following this initial vote.

There are four pari-mutuel facilities in Broward County: Dania/Summersport Jai Alai, Gulfstream Thoroughbred Park, Hollywood Greyhound Track and Pompano Park Harness that appear to qualify for the addition of slot machines gaming at their facility.

### **Debt Service on Bonds**

Article VII, Section 11 of the Florida Constitution authorizes the issuance of state bonds pledging the full faith and credit of the state and revenue bonds pledging all or part of a dedicated state tax revenue. The Division of Bond Finance in the State Board of Administration (SBA) has been the investment manager of the Florida Department of the Lottery since 1989, investing the funds into U.S. Treasury zero-coupon bonds. The SBA administers all debt service funds for bonds issued by the Division of Bond Finance on behalf of state agencies.

In s.1013.68, F.S.<sup>9</sup>, the Classrooms First Program, the state covenants with holders of bonds issued under that section that it will not take any action that would materially or adversely affect the rights of such bond holders so long as the bonds are outstanding. That statute further specifies:

“The State does hereby additionally authorize the establishment of a covenant in connection with the bonds which provides that any additional funds received by the state from new or enhanced lottery programs, video gaming, or other similar activities will first be available for payments relating to bonds pledging revenues available pursuant to s. 24.121(2), prior to use for any other purpose.” [Emphasis supplied.]

Resolutions authorizing the issuance of certain lottery revenue bonds by the Division of Bond Finance and the State Board of Education include a covenant regarding revenues from future gaming activities and specify:

“The Division covenants that new or enhanced lottery games will be operated by the Florida Department of the Lottery and any lottery revenues received by the State therefrom will be deposited into the Educational Enhancement Trust Fund or any successor to such trust fund as required by the Florida Constitution.

The Division further covenants that any net revenues received by the State from video gaming or any other similar activities, regardless of what entity operates these activities, will first be available for payment of debt service on the Bonds or other payments required pursuant to the Resolution prior to use for any other purpose.”

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<sup>9</sup> Similar language is also found in ss. 1013.70 and 1013.737.

## Florida School Board Association Agreement

On October 22, 2004, the Florida School Boards Association entered into an agreement with the seven pari-mutuel facilities in Broward and Miami-Dade Counties wherein the pari-mutuel facilities agreed to pay to the Association 30 percent of the gross slot machine revenue generated at their respective facilities annually. The agreement specifies that the payments will commence upon passage of an authorizing referendum in the county of operation and upon the initial operation of slot machines by the facility and will continue until such time as the Legislature enacts legislation providing for the collection of taxes or fees on slot machine operations.

The agreement further provides that in the event the cumulative amount of tax imposed by the Legislature is less than 30 percent of the gross slot revenue generated by the facility, each facility is required to pay the amount of the difference between the two.

Revenues collected pursuant to this agreement are required to be distributed to each school board in the state in accordance with the respective percentage allocations of general revenue funds each school district is entitled pursuant to the Florida Education Finance Plan.

### Effect of Proposed Change

See SECTION DIRECTORY below for an explanation of the effects of the proposed changes contained in this legislation.

#### C. SECTION DIRECTORY:

**Section 1.** Specifies that the act shall be known by the popular name, "Keep the Promise Act of 2005."

**Section 2.** Amends s. 16.56 relating to the Office of Statewide Prosecution.

The bill authorizes the Statewide Prosecutor to exercise powers necessary to prevent, detect, enforce, or prosecute criminal violations relating to slot machine operations and to coordinate investigations or prosecutions of violations with the Department of Law Enforcement, other law enforcement agencies and other prosecuting authorities.

**Section 3.** Amends s. 20.165(2) to create a Division of Slot Machines.

The bill creates a new Division of Slot Machines (division) in the Department of Business and Professional Regulation (DBPR).

**Section 4.** Creates chapter 551, F.S., relating to slot machines. [Chapter 550, F.S., relates to pari-mutuel wagering.]

#### **551.101 Slot Machine Gaming Authorized.**

The bill tracks constitutional amendment language authorizing slot machine gaming and exempts slot machines from gambling prohibitions in general law.

#### **551.103 Definitions.**

The bill defines several terms, including:

"Slot machine" is defined to be Class II machines that are owned by the licensee and are linked to a centralized management system for auditing/accounting purposes.

"Slot machine licensee" is defined to be one who is the pari-mutuel permitholder and holds the actual license authorizing slot machine gaming and "slot machine occupational licensee" as all other categories, e.g. manufacturers, distributors, service and repair technicians, employees, etc.

"Designated slot machine gaming area" means the area of a facility of a slot machine licensee in which slot machine gaming may be conducted in accordance with the provisions of this chapter.

"Slot machine revenues" means the total of all cash and property received by the slot machine licensee from slot machine gaming operations less the amount of cash, cash equivalents, credits, and prizes paid to winners of slot machine gaming.

#### **551.1071 Powers and duties.**

The division is given rulemaking authority for licensure and tax collection. The bill also grants unrestricted access to premises and authority to inspect, collect taxes, examine records, etc., requires strict compliance with laws by slot machine licensee; allows the division to deny, revoke, suspend or place conditions on licenses; and requires the division to revoke or suspend the license of an entity no longer qualified. The bill also allows the division to conduct criminal investigations in conjunction with the statewide prosecutor, appropriate state attorney and local law enforcement and grants law enforcement authority to division employees and agents.

The bill provides rule authority to the division to establish a machine payout percentage of **XXX** percent.

#### **551.1073 License to conduct slot machine gaming.**

This section provides general licensing requirements, such as: the slot machine license may only be issued to a licensed pari-mutuel permitholder in a county that has voted to allow slot machine gaming; slot machine gaming may only be conducted at the same facility authorized for pari-mutuel wagering; and the applicant must show that the authority for slot machine gaming has not been rescinded in that county.

The bill also establishes as condition of licensure that the licensee must: continue to be in compliance with this chapter and chapter 550 and conduct no fewer than the greater number of live events conducted in 2002 or 2003 [these dates are referenced in the constitutional amendment]; requires the licensee to be responsible for maintaining and providing current and accurate information of any changes relating to qualifications for the license; requires the applicant for licensure to submit an organizational and operational plan for slot machine gaming; and provides that a slot machine license is not transferable.

#### **551.1077 Slot machine license renewal.**

The bill provides for annual renewals and requires certain information and attestation by the licensee that certain changes do not affect applicant's qualifications for renewal. It requires performance standards to be evaluated for renewal approval. See ss. 551.30 (7), (8), and (9), starting on line 792 of the bill.

#### **551.1079 License fee; machine fee; franchise fee; tax rate and assessment.**

The bill imposes a **\$XXX** annual license fee per slot machine license. The fee is required to be deposited in the Slot Machine Administrative Trust Fund. The bill requires recommendations by the division to be submitted to the Legislature prior to January 1, 2006, relating to regulatory costs and fee levels, including the possibility of a per-machine fee.

The bill imposes a one-time up-front **\$XXX** franchise fee to be deposited unallocated to the Education Supplement Trust Fund.

The bill imposes a **XXX** percent tax rate on slot machine revenue beginning January 1, 2007, with true-up [an additional payment to achieve the total tax amount] on January 1, 2008 and each year thereafter if the amount received is less than \$500 M. It provides for a pro rata assessment of true-up based on the number of machines at the particular licensee's facility. The tax revenues are to be deposited unallocated to the Education Supplement Trust Fund.

The bill imposes a 10 percent citizens empowerment royalty fee on certain non-slot machine related revenues that have been generated on the property of the pari-mutuel facility that have been added after its slot machine operational authority. The revenues are to be deposited in the General Revenue Fund through the Department of Revenue.

The bill imposes a \$1,000 per day administrative penalty for failure to make tax payments. Fines are to be deposited into the Slot Machine Administrative Trust Fund. It allows the division to suspend or revoke a slot machine license for failure to pay penalties. Willful or wanton failure to pay the tax or a deficiency assessment constitutes sufficient grounds for revocation of the license.

The bill authorizes the division to require electronic funds transfer [EFT] of payments.

#### **551.1091 Occupational license required; application; fees.**

The bill requires persons associated with the slot machine operations, such as manufacturers, distributors, management companies, repair technicians, etc. to possess a slot machine occupational license and the slot machine licensee may not employ or conduct business with anyone who does not hold a license.

The bill authorizes the division, by rule, to establish required information from applicants. It requires an FBI fingerprint/background check upon initial application and every five years thereafter. Food service, maintenance and other service or support employees with a current pari-mutuel occupational license and current background check are not required to obtain an additional background check.

Standards for disqualification include a felony or misdemeanor involving gambling, bookmaking, forgery, larceny, extortion, conspiracy to defraud, or filing false reports, etc.

The bill establishes occupational license fees in the amounts not to exceed \$50 for employees of the slot machine licensee and not to exceed \$1,000 for a business occupational license. Revenues are to be placed in the Slot Machine Administrative Trust Fund.

#### **551.1111 Prohibited relationships.**

The bill prohibits: division employees from being employed by anyone licensed by the division or holding any interest in the business of anyone licensed by the division; revenue sharing based on a percentage of slot machine revenues between a slot machine licensee and manufacturers or distributors; and a manufacturer, distributor, etc. is prohibited from having any ownership or financial interest in a slot machine licensee or business owned by a slot machine licensee.

#### **551.1113 Prohibited acts.**

The bill specifies prohibited acts and penalties to include: false statements in any report, disclosure, application, etc. and subjects those acts to a fine of up to \$10,000, in addition to other penalties; possession of a slot machine without a license or possession of a slot machine at a location not authorized to conduct slot machine gaming and subjects that possession to a fine of up to \$10,000, in addition to other penalties; and intentionally excluding revenue from deposit,

collection, computation, etc. and subjects those exclusions to a fine of up to \$25,000, in addition to other penalties

#### **551.1115 Illegal devices.**

The bill specifically exempts slot machines possessed or operated under this chapter from other prohibitions in general law.

#### **551.1119 Facilities of slot machine licensees.**

The bill allows the division to exclude certain persons from slot machine facilities but authorizes the division to allow a previously excluded person in slot machine facilities upon a finding that the person's attendance would not be adverse to the public interest or integrity of the industry.

The bill requires posting of signs warning of the risks and dangers of gambling, showing the odds of winning, and a toll-free number for information and referral services relating to compulsive or problem gambling.

The bill requires slot machine licensees to provide equipment in the slot machine gaming area sufficient to allow the observation of and wagering on live, intertrack and simulcast pari-mutuel races and games.

#### **551.121 Minors prohibited from playing slot machines.**

No slot machine licensee shall allow a person under 18 to play a slot machine, be in the slot machine gaming area, or be employed in a position allowing or requiring access to the slot machine gaming area.

#### **551.125 Credit and other devices prohibited.**

The bill specifies that: ATMs or similar devices are prohibited; loans, credit or cash advances by a licensee to customers are prohibited; slot machines may not be capable of accepting cash or other currency; and slot machines may not be designed to display "near wins" or give the impression that the chance to win is improved by another play.

#### **551.20 Hours of operation.**

Operating time is restricted from 12 noon to 12 midnight.

#### **551.25 Penalties.**

The bill allows suspension or revocation of a license for willful violations or imposition of \$1,000 civil penalty for each offense. Penalties are deposited into the Slot Machine Administrative Trust Fund.

It allows suspension or revocation for maintaining a nuisance on the premises that tends to annoy the community, injure the health of the citizens in general, or corrupt the morals.

The division is required to revoke the slot machine license when it is determined by the division that a pattern of three violations constituting a nuisance occurred on the slot machine premises within a 90-day period.

#### **551.30 State Slot Machine Gaming Board.**

The bill creates the State Slot Machine Gaming Board (board) within the Division of Slot Machines at DBPR whose stated purpose includes: safeguarding the state's commitment to

control gambling-related crime, prevent expansion of gambling, prevent gambling's negative impact on economic development and tourism, control the negative social and community impacts of gambling, ensure no diminution of the licensee's prior business purpose, hold licensees to the highest operational standards, hold licensees accountable for all negative impacts of the gambling business and in so doing ensure the licensees keep the promise made to Florida voters.

The board is comprised of 9 voting members who serve without compensation with the Director of the Division of Slot Machines serving as an ex-officio, nonvoting member. The Governor appoints members with Senate confirmation.

The bill establishes the powers and duties of the board to include conducting a slot machine gaming performance evaluation and it requires at least quarterly meetings. It authorizes the division to adopt performance, qualification, and expectation rules, as well as rules requiring data to be submitted to the board for evaluation. The board is required to prepare an annual report of activities and performance outcomes of the slot machine licensees.

The bill requires program performance audits by OPPAGA beginning in 2010.

#### **551.33 Law enforcement affidavits.**

The bill requires affidavits to be submitted to the board from local law enforcement agencies that are in or near the boundaries of slot machine gaming facilities. The statements should reflect funding levels for law enforcement relating to impacts of slot machine gaming.

#### **551.34 Local government resolutions.**

The bill requires local governmental bodies, in proximity to slot machine gaming facilities, to adopt an annual resolution demonstrating slot machine gaming impacts on local communities; the resolutions must be transmitted to the board for evaluation.

#### **551.341 Tourist development council resolutions.**

The bill requires a local Tourist Development Council (TDC), or Board of County Commissioners if there is no TDC in that county, to adopt a resolution addressing the impacts on tourism growth and expansion in local communities throughout the state as a result of slot machine gaming; the resolution must contain statistical data and other practical collateral impacts and evidence on local tourism activity and be provided to the board.

#### **551.35 Referenda.**

The bill authorizes a local referendum every two years, resulting from a sufficient number of petitions by electors, county or municipal, to add to the ballot of an already called election, the question of whether slot machine gaming operations are an undue burden on the communities; the election results are required to be submitted to the board.

#### **551.35 Compulsive gambling program.**

The bill requires the Mental Health Program Office at the Department of Children & Family Services in conjunction with the Department of Education to establish a program for public education, awareness, training and treatment of problem and compulsive gambling.

The program must include: maintenance of toll-free hotline to provide crisis counseling and referral services; the promotion of public awareness regarding recognition and prevention of problem gambling; facilitation of the availability of effective assistance programs; and studies to identify at-risk adults and juveniles.

**Section 5.** Effective date of July 1, 2005.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

The PCB does not specify some important economic impact determinants such as the exact number of machines that will be authorized at pari-mutuel facilities or the tax rate applicable to slot machine revenues, and, therefore, has not been considered by the Revenue Estimating Conference. However, s. 100.371, Florida Statutes, requires that the Financial Impact Estimating Conference (conference) complete an analysis and financial impact statement of the estimated increase or decrease in any revenue or costs to state or local governments resulting from a proposed constitutional initiative. The following fiscal information relies heavily on the Financial Information Statement prepared by the conference for Amendment 4.

**1. Revenues:**

According to the conference, revenues to the state would result from the Legislature's decision to tax slot machine activity. It was estimated by the conference that by the third year of activity, the range of tax revenues raised would be from \$250 M to \$600 M, assuming that both counties passed the referenda, and that the Legislature taxed the activity at a typical tax rate between 30% and 50%. The conference projected there would be a reduction in sales tax collections (between \$30 M and \$45 M), due to a shift in spending from items subject to the sales tax to spending on slot machines. Additionally, there would be a reduction in revenues from the sale of lottery tickets (between \$40 and \$55 M), as spending on slot machines displaced some spending on lottery tickets. The overall effect on state revenues was expected to be an increase in revenue ranging from \$200 M to \$500 M. However, if only Broward County passed the referendum, the conference projected the estimated increase would be between \$100 M and \$300 M.

Projections of potential increases in state revenue have also been made by The Innovation Group, which was engaged by Floridians for a Level Playing Field to prepare a Technical Memorandum on the direct relationship between taxation and regulation of the pari-mutuel slot venues and their development and performance in the United States. In the memorandum The Innovation Group stresses that:

“...an optimal tax rate is one that maximizes revenue potential to the State, but also one that gives incentive for facility owners to develop and operate attractive facilities with maximum efficiency. . . . The optimal gaming tax rate should then allow for enough cash flow from operations to service the debt on facility development, offset depreciation of assets, and provide a return on capital sufficient to raise financing, and warrant investment at the levels necessary to develop competitive facilities.

Assuming a blended rate to the State, local government payments, and disbursement to purses and to breeders in the combined amount of 42.5%, the *seven* (emphasis supplied) South Florida facilities could generate \$433 M in State gaming taxes in the first year of operation, while generating sufficient cash flow to develop and operate attractive facilities.”<sup>10</sup>

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<sup>10</sup> *Technical Memorandum: Gaming Tax Rates, Gross Gaming Revenues and Development Considerations at Racinos*, The Innovation Group, February 2005, pages i and ii.

According to the memorandum, the four Broward County facilities were projected to generate approximately 55% of the slot revenues across the two counties. The projections by Innovation Group assumed a total of 10,000 machines in Broward County, a 30% tax rate, and a favorable regulatory environment. Applying the 55% figure, specified in the memorandum as Broward County's share of total gaming slot machine revenue, to the projected state tax revenue figure of \$433 M would yield \$216.5 M in state tax revenue that might be expected to be generated from slot machine gaming at pari-mutuel facilities in Broward County.

#### Tax Rate on Machine Revenues

Although the language of the PCB does not set a specific tax rate applicable to slot machine revenues, it does anticipate the imposition of a tax beginning January 1, 2007, at a rate yet to be determined. Additionally, it requires the annual imposition of deficiency assessments upon slot machine licensees on a pro rata basis in accordance with the number of machines licensed at each facility in an amount equaling the difference between \$500 M and the actual total amount of slot machine revenue tax collected from all slot machine licensees. Accordingly, relying upon the data supporting the economic impact projections made by the conference for Amendment 4, the \$500 M "true-up" at the end of each tax year would, theoretically, yield a final tax rate of 42% if 3000 machines were allowed at each facility, or 72% if 1,765 machines were allowed at each facility.

#### Franchise Fee

The PCB imposes a one-time franchise fee upon each of the potential four slot machine licensees as a prerequisite to commencing slot machine gaming. The amount of this fee is yet to be determined; therefore, the amount of any revenue that may be generated by the fee is indeterminable.

#### Slot Machine Licensee Fee

The PCB imposes a slot machine license fee, in a yet to be determined amount, that would be payable by any of the four eligible permit holders issued a license to conduct slot machine gaming. The amount of revenue that may be generated by this fee for deposit in the newly created Slot Machine Administrative Trust Fund for offsetting regulatory costs is indeterminable.

#### Per Machine License Fee

The PCB also requires an evaluation by the Division of Slot Machines prior to January 2006, of a possible annual slot machine license fee that would be applicable to each individual slot machine. Based on its evaluation, the division is to make recommendations regarding the feasibility of funding the regulatory costs from such a fee, either in lieu of or in combination with the annual license fee applicable to each of the four slot machine licensees. The amount of revenue that may be generated, if such a fee were imposed, would depend upon the number of machines approved for gaming. Since both the number of machines that will be allowed and the amount of such a fee have yet to be determined, the amount of revenue that may be generated by an individual machine license fee is indeterminable.

#### Citizens' Empowerment Royalty Fee

The PCB imposes a 10% citizens' empowerment royalty fee for remittance to DOR for deposit in the General Revenue fund on all non-slot machine sales and operations on the property of the pari-mutuel facility that have been added after its slot machine operational authority. The extent to which new sales may be generated from operations added as a result of the authorization to conduct slot machine gaming will depend upon the individual economic decisions of those permit holders who may choose to conduct slot machine gaming and the nature of any additional investment they may choose to make; therefore, the amount of any revenue that may be generated from this fee is currently indeterminable.

#### Tax on Profits from Sale of Pari-mutuel Permit or Facility

The PCB also imposes a tax on the profit from the sale of the pari-mutuel permit or the pari-mutuel facility by a slot machine licensee or other owner. The tax rate applicable to such sales, as well as the likelihood or timing of such sales is indeterminable; therefore, the amount of any revenue that may be generated from this tax is currently indeterminable.

#### Occupational License Fees

The PCB imposes occupational licensing fees upon general employees, food service, maintenance, and other similar employees with access to the designated slot machine gaming area and upon professionals who manage, oversee, or otherwise control the daily operations of the slot machine licensee in an amount not to exceed \$50. In addition, the PCB imposes business occupational license fees in an amount not to exceed \$1,000 upon businesses associated with slot machine gaming or that manufacture, sell, or distribute slot machines or other associated equipment or persons who are not employees who provide maintenance or repair slot machines or related equipment. The amount of revenue which might be generated from the issuance of occupational licenses is not currently determinable.

## 2. Expenditures:

According to the conference, costs to the state are expected to increase due to regulatory, oversight, and licensing requirements. The PCB creates a new Division of Slot Machines within the Department of Business and Professional Regulation with regulatory, oversight, and licensing responsibilities. In addition, the PCB creates the Board of Slot Machines to be housed within the new division and requires the division to provide staff support for the board's activities. DBPR has made a preliminary determination of the expenditures that will be necessary to implement the provisions of the PCB. Although the language of the PCB implies that regulatory costs are to be offset by commensurate licensing fees applicable to the four eligible slot machine licensees, individual slot machine licensing fees, and occupational licensing fees, the aggregate amount of those revenues has not yet been determined since the exact amounts of many of the fees in the PCB have not been determined.

DBPR estimates that for FY 2005-06 the total costs for the new Division of Slot Machines to fulfill its responsibilities under the PCB would be approximately \$10.5 M of which approximately \$6.4 M would be recurring and \$4.1 M non-recurring. Consequently, the cost for the operations of the division for the next two fiscal years (FY 06-07 & FY 07-08) would be approximately \$6.4 M each year. The yearly recurring costs are primarily comprised of approximately \$4.5 M for salaries, benefits, expenses, and operating capital outlay associated with 55 FTE's in the division (47 professional & 8 support positions), \$0.8 M for Slot Machine Board expenses, \$0.5 M for central monitoring system maintenance, and \$0.5 M for contract servicing and technical testing. A major portion of the first year non-recurring costs of \$4.1 M consists of \$3.0 M for development, testing and implementation of a central monitoring system and \$0.8 M for reconfiguration and expert witness fees.

In addition to regulatory costs associated with slot machine operations, the conference concluded that with an overall increase in the level of gambling, the state can expect an increase in costs related to problem gambling, which could lead to a need for increased expenditures in several areas, including law enforcement (including impacts on the courts and prisons), as well as mental health and addiction treatment costs, among others. The magnitude of the costs associated with increased problem gambling was not quantified by the conference.

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

According to the conference fiscal impact statement and analysis, local governments statewide would experience a loss in revenues from the sales tax of between \$5 M and \$8 M. When projecting a likely revenue increase for local governments in both Miami-Dade and

Broward counties due to increased tourism and recreational activity, the conference did not distinguish the situation based upon whether a referendum in only one or both counties passed authorizing slot machines. However, since the conference did project that nearby local governments would experience a reduction in tourism and recreational activity if the availability of slot machines makes Miami-Dade and Broward Counties more attractive as tourism destinations, it might logically follow that the failure of voters in Miami-Dade County to authorize slot machines by referendum could result in Miami-Dade County experiencing a reduction of tourism and recreational activity, as well. This revenue reducing effect upon nearby local governments, including Miami-Dade County, would be lessened, however, if the availability of slot machines attracts tourists who would have otherwise chosen destinations outside of Florida, or who would have chosen day cruises or casinos located on Indian reservations as gambling destinations. According to the conference, the combined impact of these effects could not be determined at that time.

To assist in defraying the cost of local government impacts, including the effects upon quality of life and community values, costs, and expenses that will be incurred as a result of the pari-mutuel facilities' development and operation of slot machines, Broward County has entered into written agreements with the four pari-mutuel facilities located in the county. In addition to payments to the county for county-wide impacts, the agreements provide for payments to the county that will be distributed to the municipalities where the facilities are located. The payment percentages are as follows per facility: 1) For county-wide impacts, 1.5 percent of the first \$250 M in slot machine revenues and 2.0 percent of revenues above \$250 M; and, 2) For the municipalities where the facilities are located, 1.7 percent of the first \$250 M in slot machine revenue and 2.5 percent above \$250 M.

## 2. Expenditures:

Local governments including Broward county, municipalities where the facilities are located, and nearby counties and municipalities may incur increased expenditures to meet additional needs related to law enforcement, transportation, and human services. The expenditures required to meet those needs are not quantifiable at this time.

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In projecting state revenues from slot machine gaming, the conference estimated that if only Broward County passed the referendum, state revenues would increase between \$100 M and \$300 M. The \$300 M estimate was based upon 1,765 machines per location and a tax rate of 50 percent. Under such a scenario, total slot machine revenues would amount to nearly \$700 M, resulting in *gross* slot machine revenues (not profit) to permitholders, in the aggregate, of approximately \$350 M. However, many other factors, such as the tax rate, the type of machines allowed, hours of operation allowed, operating and overhead expenses incurred, as well as the economic feasibility for permitholders to develop ancillary services will ultimately determine the potential total gross revenues and resultant profits achievable by permitholders conducting slot machine gaming.

In the technical memorandum prepared for Floridians for a Level Playing Field by The Innovation Group it was projected that a total of 10,000 jobs would be created at the *seven* (emphasis supplied) eligible facilities and that an additional 10,000 jobs were likely to be created indirectly as a result of services provided to the operations and the increased spending power of facility employees. The memorandum also projected that the agriculture and breeding-related industries would benefit from increased purses and breeder awards distributed from a share of slot machine revenues. However, the memorandum cautioned that: "These levels of state revenues, direct employment, indirect employment, and agricultural industry enhancement, would not be realized under an inefficient tax and regulatory regime."<sup>11</sup>

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<sup>11</sup> *Technical memorandum: Gaming Tax Rates, Gross Gaming Revenues and Development Considerations at Racinos*, The Innovation Group Project #19904, February 2005, page ii.

In conclusion, the degree to which other private individuals or businesses (including Indian gaming facilities, cruises-to-nowhere, and tourist destinations and attractions) nearby the slot machine gaming facilities or located throughout the state will benefit or be harmed economically by the presence of slot machine gaming in Broward County does not appear quantifiable at this time.

#### D. FISCAL COMMENTS:

By the terms of Amendment 4, any state revenue from the taxation of slot machines must be used for supplementing public education funding statewide. Revenues from the taxation of slot machines may be required to be deposited in the Educational Enhancement Trust Fund to be available first for debt service payments on bonds issued under the 1997 School Capital Outlay Bond Program, the Classrooms First Program, and the Class Size Reduction Lottery Revenue Bond Program pursuant to ss. 1013.70(1) , 1013.68(4), and 1013.737( 3), F.S., respectively. All of those subsections authorize the establishment of covenants in connection with the issuance of bonds that provide that any additional funds received by the state from new or enhanced lottery programs, video gaming, or other similar activities will first be available for payments relating to the bonds, prior to use for any other purpose. The Resolutions of the Division of Bond Finance of the State Board of Administration which appear in the Official Statements related to the issuance of bonds under those programs contain covenants with the registered owners that any net revenues received by the state from video gaming or other similar activities, regardless of what entity operates these activities, will first be available for payment of debt service on the bonds or other payments required pursuant to the Resolution prior to use for any other purpose. However, the applicability of these covenants to *tax* revenue derived from slot machine gaming in pari-mutuel facilities may be called into question, since Article VII, Section 11(d), of the Florida Constitution provides that “revenue bonds may be issued by the state or its agencies without a vote of the electors to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, and shall be payable solely from funds derived directly *from sources other than state tax revenues.*” (emphasis supplied)

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill requires each Tourist Development Council, or Board of County Commissioners if there is no Tourist Development Council, to adopt a resolution at least annually that expresses whether slot machine gaming is being operated in a manner that demonstrates a commitment to the growth and expansion of tourism in this state and a commitment to ameliorate detriment to communities that are current tourist destinations but do not have slot machine gaming being conducted within their jurisdiction. The resolution is required to contain a recitation of those factual circumstances which support a conclusion that the operations of slot machine licensees have a substantial positive or negative effect on the expansion and growth of tourism within their jurisdiction. Impacts are required to be supported by statistical data and other practical collateral impacts and evidence on local tourism activity. While this provision would require counties to spend money or take an action which requires the expenditure of money and therefore would constitute a local mandate, the bill is exempt from the requirements of Article VII, Section 18(a) because the required expenditures, in the aggregate, would have an insignificant fiscal impact.

This bill does not reduce the authority that cities or counties have to raise revenues in the aggregate. This bill does not reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

The question has arisen whether restricting pari-mutuel facilities to Class II gaming machines as defined under federal law comports with the authorization of “slot machines” under Amendment 4. The Indian Gaming Regulatory Act (IGRA) includes within the gambit of Class II gaming, non-banked card games and bingo, including related games such as pull-tabs and lotto, for example.<sup>12</sup> Bingo games can use “electronic, computer or other technologic aids.” Class II machines, although designed to outwardly mimic Class III machines, are essentially configured by being linked together so that the players are playing bingo against one another instead of playing against the machine as is the case with Class III machines, often referred to as “Vegas-style” slot machines. Federal law under the IGRA, specifically excludes from the Class II gaming category slot machines of any kind which by definition fall within the Class III gaming category and which, therefore, require a compact between an Indian tribe and the state.

In contrast to the IGRA, current state law prohibits slot machines broadly by defining a slot machine as essentially any machine or device that is adapted for activation by a coin or other thing of value that when activated by a player may, by the element of chance, entitle a player to something of value.<sup>13</sup> Thus, Class II machines would appear to fit within the broad parameters of the state definition of slot machines. However, a recent Advisory Opinion to the Attorney General by the Florida Supreme Court during the Court’s review of proposed constitutional Amendment 4 calls into question whether Class II bingo-type machines fall within the ambit of the term “slot machines” for purposes of the amendment.<sup>14</sup>

In arguing that Amendment 4 violated the single-subject requirement, the Attorney General contended that slot machines in pari-mutuel facilities would constitute lotteries, and, therefore, the amendment would have the effect of amending the two current Lottery provisions of the Florida Constitution without notice of such effect. The two existing provisions of the Constitution prohibit lotteries, except those pari-mutuel pools authorized by law as of the effective date of the Constitution and the Lottery operated by the State. Relying on prior case law and statutory law, the Court found that a slot machine is not a lottery and, therefore, the amendment did not amend the lottery provisions of the Constitution. The Court’s determination is important, because the Court has also held that bingo is a lottery which is not prohibited by the Constitution because it was authorized at the time of the adoption of the 1968 Constitution.<sup>15</sup> Thus, it could be argued that if slot machines are not a lottery, then Class II machines that are designed to play bingo, which is a lottery, are not the type machines contemplated by Amendment 4.

**B. RULE-MAKING AUTHORITY:**

The Division of Slot Machine Gaming is granted significant rule-making authority under the provisions of this legislation.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None noted.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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<sup>12</sup> See 25 U.S.C., sec. 2703.

<sup>13</sup> See ss. 849.15 & 849.16, F.S.

<sup>14</sup> *Advisory Op. to the Att’y Gen. re: Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities*, Case No. SC04-1057, July 15, 2004.

<sup>15</sup> *Greater Loretta Improvement Association v. State ex rel. Boone*, 234 So.2d 665 (Fla. 1970).