COMMERCE COUNCIL
ACTION PACKET
SPECIAL SESSION "B"

December 6, 2005
8:40 a.m. – 9:20 a.m.
Reed Hall

REVISED

Allan G. Bense
Speaker

Frank Farkas
Chair

COUNCIL MEETING REPORT

Commerce Council

12/6/2005 8:40:00AM

Location: Reed Hall (102 HOB) **(AMENDED)**

Summary:

Commerce Council

Tuesday December 06, 2005 08:40 am

HB 1B	Favorable	Yeas:	13	Nays:	0
HB 29B	Favorable	Yeas:	13	Nays:	0

Committee meeting was reported out: Tuesday, December 06, 2005 9:48:38AM

COUNCIL MEETING REPORT

Commerce Council

12/6/2005 8:40:00AM

Location: Reed Hall (102 HOB) **(AMENDED)**

Attendance:

	Present	*Absent*	*Excused*
Frank Farkas (Chair)	X		
Frank Attkisson	X		
Gus Bilirakis	X		
Ellyn Setnor Bogdanoff	X		
Terry Fields	X		
Kenneth Gottlieb	X		
Edward Jennings	X		
Charlie Justice	X		
Dick Kravitz			X
Kenneth Littlefield	X		
Dennis Ross	X		
Timothy Ryan	X		
Anthony Traviesa	X		
Trudi Williams	X		
Totals:	**13**	**0**	**1**

Committee meeting was reported out: Tuesday, December 06, 2005 9:48:38AM

COUNCIL MEETING REPORT

Commerce Council

12/6/2005 8:40:00AM

Location: Reed Hall (102 HOB) **(AMENDED)**

HB 1B : Slot Machine Gaming

X *Favorable -*

	Yea	*Nay*	*No Vote*	*Absentee Yea*	*Absentee Nay*
Frank Attkisson	X				
Gus Bilirakis	X				
Ellyn Setnor Bogdanoff	X				
Terry Fields	X				
Kenneth Gottlieb	X				
Edward Jennings	X				
Charlie Justice	X				
Dick Kravitz			X		
Kenneth Littlefield	X				
Dennis Ross	X				
Timothy Ryan	X				
Anthony Traviesa	X				
Trudi Williams	X				
Frank Farkas (Chair)	X				
	Total Yeas: 13	**Total Nays: 0**			

Committee meeting was reported out: Tuesday, December 06, 2005 9:48:38AM

COUNCIL MEETING REPORT

Commerce Council

12/6/2005 8:40:00AM

Location: Reed Hall (102 HOB) **(AMENDED)**

HB 29B : State Minimum Wage

[X] *Favorable -*

	Yea	*Nay*	*No Vote*	*Absentee Yea*	*Absentee Nay*
Frank Attkisson	X				
Gus Bilirakis	X				
Ellyn Setnor Bogdanoff	X				
Terry Fields	X				
Kenneth Gottlieb	X				
Edward Jennings	X				
Charlie Justice	X				
Dick Kravitz			X		
Kenneth Littlefield	X				
Dennis Ross	X				
Timothy Ryan	X				
Anthony Traviesa	X				
Trudi Williams	X				
Frank Farkas (Chair)	X				
	Total Yeas: 13	**Total Nays: 0**			

Committee meeting was reported out: Tuesday, December 06, 2005 9:48:38AM

COMMERCE COUNCIL
ACTION PACKET
SPECIAL SESSION "B"

COMMERCE COUNCIL
DECEMBER 6, 2005
8:20 A.M. – 9:20 A.M.

AMENDED

Allan G. Bense
Speaker

Frank Farkas
Chair

COUNCIL MEETING REPORT

Commerce Council

12/6/2005 8:40:00AM

Location: Reed Hall (102 HOB) **(AMENDED)**

Summary:

Commerce Council

Tuesday December 06, 2005 08:40 am

HB 1B	Favorable	Yeas: 13 Nays: 0
HB 29B	Favorable	Yeas: 13 Nays: 0

Committee meeting was reported out: Tuesday, December 06, 2005 9:48:38AM

COUNCIL MEETING REPORT

Commerce Council

12/6/2005 8:40:00AM

Location: Reed Hall (102 HOB) **(AMENDED)**

Attendance:

	Present	*Absent*	*Excused*
Frank Farkas (Chair)	X		
Frank Attkisson	X		
Gus Bilirakis	X		
Ellyn Setnor Bogdanoff	X		
Terry Fields	X		
Kenneth Gottlieb	X		
Edward Jennings	X		
Charlie Justice	X		
Dick Kravitz			X
Kenneth Littlefield	X		
Dennis Ross	X		
Timothy Ryan	X		
Anthony Traviesa	X		
Trudi Williams	X		
Totals:	**13**	**0**	**1**

Committee meeting was reported out: Tuesday, December 06, 2005 9:48:38AM

COUNCIL MEETING REPORT

Commerce Council

12/6/2005 8:40:00AM

Location: Reed Hall (102 HOB) **(AMENDED)**

HB 1B : Slot Machine Gaming

X *Favorable -*

	Yea	*Nay*	*No Vote*	*Absentee Yea*	*Absentee Nay*
Frank Attkisson	X				
Gus Bilirakis	X				
Ellyn Setnor Bogdanoff	X				
Terry Fields	X				
Kenneth Gottlieb	X				
Edward Jennings	X				
Charlie Justice	X				
Dick Kravitz			X		
Kenneth Littlefield	X				
Dennis Ross	X				
Timothy Ryan	X				
Anthony Traviesa	X				
Trudi Williams	X				
Frank Farkas (Chair)	X				
	Total Yeas: 13	**Total Nays: 0**			

Committee meeting was reported out: Tuesday, December 06, 2005 9:48:38AM

COUNCIL MEETING REPORT

Commerce Council

12/6/2005 8:40:00AM

Location: Reed Hall (102 HOB) **(AMENDED)**

HB 29B : State Minimum Wage

[X] *Favorable -*

	Yea	*Nay*	*No Vote*	*Absentee Yea*	*Absentee Nay*
Frank Attkisson	X				
Gus Bilirakis	X				
Ellyn Setnor Bogdanoff	X				
Terry Fields	X				
Kenneth Gottlieb	X				
Edward Jennings	X				
Charlie Justice	X				
Dick Kravitz			X		
Kenneth Littlefield	X				
Dennis Ross	X				
Timothy Ryan	X				
Anthony Traviesa	X				
Trudi Williams	X				
Frank Farkas (Chair)	X				
	Total Yeas: 13	**Total Nays: 0**			

Committee meeting was reported out: Tuesday, December 06, 2005 9:48:38AM

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 0001B PCB BR 05B-01
SPONSOR(S): Business Regulation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Business Regulation Committee	17 Y, 0 N	Morris	Liepshutz
1) Commerce Council	13 Y, 0 N	Morris	Bohannon
2) Fiscal Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill implements Article X, Section 23 of the State Constitution which authorized, contingent upon voter approval in a local referendum, the operation of slot machines at certain existing pari-mutuel facilities in Broward and Miami-Dade Counties.

The bill authorizes Class III Las Vegas-style slot machines, limits the number of machines that may be operated at a facility to no more than 1,000 per facility, and imposes a flat tax of 55% on slot machine revenue. Slot machine gaming may be conducted up to 16 hours per day year-round. The payout rate is required to be no less than 85 percent per facility per day and players must be at least 21 years of age. Slot machine prize payouts of $600 or more must be checked against a database of persons owing delinquent child or spousal support before being paid and any such delinquency is deducted from the prize payment.

The bill establishes the regulatory framework for all entities involved in the operation of slot machine gaming and regulatory responsibility is placed in the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation and all regulation of slot machine gaming is preempted to the state. The bill provides for a significant law enforcement presence through the Florida Department of Law Enforcement and local law enforcement agencies.

The bill provides for thoroughbred purses, breeders', stallion and special racing awards.

The Revenue Estimating Conference estimates that the provisions of this bill would generate approximately $158.9 million in FY 2007-08. The conference assumed no revenues would be collected in FY 2005-06 and assigned an indeterminate impact in FY 2006-07. The conference estimates that the provisions of the bill would have a negative $2.1 million impact on local government revenue collections. [see Fiscal Section for more information.]

Estimated regulatory costs total $6,295,798 in Fiscal Year 2005-2006, with annualized recurring costs estimated at $8,294,387. In addition, the annual cost associated with the prevention of compulsive and addictive gambling totals $1 million.

The bill takes effect upon becoming a law.

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:

Present Situation

Article X, Section 23 - Slot Machines

Amendment 4 to the State Constitution was approved by the voters at the November 2004 General Election. 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.

Effect of Proposed Changes

This bill creates a new chapter 551, Florida Statutes, entitled Slot Machines. The Division of Pari-mutuel Wagering [Division] in the Department of Business and Professional Regulation is tasked with the regulatory oversight of slot machine gaming at qualifying pari-mutuel facilities.

The Division is required to implement rules relating to licensing, regulation, tax collection, auditing, investigations, and administrative enforcement of chapter 551. The division, the Department of Law Enforcement [FDLE], and local law enforcement agencies are granted unrestricted access to the slot machine facility at all times and shall require strict compliance with all laws of the state by the licensee. The bill requires the slot machine licensee to provide adequate office space to the division and the FDLE at the slot machine facility for oversight of slot machine operations. The office space must be provided at no cost, and the division is authorized to adopt rules establishing the required configuration, location, and needed electronic and technological requirements.

A slot machine license may only be issued to a licensed pari-mutuel permitholder in a county that has voted to allow slot machine gaming pursuant to Art. X, Section 23 of the State Constitution. Slot machine gaming may only be conducted at the same facility authorized for pari-mutuel wagering, and the slot machine gaming areas must be connected to and contiguous with the operation of the live gaming facility. A slot machine license is not transferable and must be renewed annually.

Existing s. 849.16, F.S., provides that any machine or device is a slot machines or unlawful device under chapter 849 if it is one that is adapted for use in such a way that the machine operates as a result of the insertion of any piece of money, coin, or other object and the user, by reason of any element of chance, may receive or become entitled to receive money, or credit, tokens, etc. which may be exchanged for money or other thing of value, or secure additional chances to use the machine. This bill creates a new definition for slot machines, as follows:

> "Slot machine" means any mechanical or electrical contrivance, terminal, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. Slot machines may use spinning reels, video displays, or both. A slot machine is not a "coin-operated amusement machine" as defined in s. 212.02(24), or an amusement game or machine as described in s. 849.161, and slot machines are not subject to the tax imposed by s. 212.05(1)(h).

Notwithstanding this definition, the bill places a restriction on the type of slot machines that may be used by specifying that the machines may accept only "tickets or paper currency or an electronic payment system" and that coins, credit or debit cards, tokens, or similar objects are prohibited. Payouts to the player must be made in the form of tickets that may be exchanged for cash, merchandise, or other items of value. This provision does not preclude the use of electronic credit systems, e.g. player cards, etc., for making wagers and issuing payouts. The bill also prohibits progressive games whereby slot machines in one or more facilities are linked and offer higher payouts.

Slot machine licensees are prohibited from making loans, providing credit, or cashing personal, third-party, corporate, business, or government-issued checks and ATMs are not allowed in the facility.

The bill limits the number of machines that may be operated at a facility to no more than 1,000 per facility, and the payout rate is required to be no less than 85 percent per facility per day. Slot machine gaming may be conducted up to 16 hours per day, 365 days a year.

The bill imposes a tax of 55% on slot machine revenue which is defined to be "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." The tax is required to be paid by the 5th day of each month. The division may require that all taxes, fees, or other assessments be paid by electronic funds transfer.

Each slot machine licensee is required to post a $2 million performance bond for the licensee's first year of operation. Thereafter, the bond may be reviewed for adequacy by the division but in no case can it be reduced below $2 million.

The annual slot machine license fee is $3 million which is deposited into the Pari-mutuel Wagering Trust Fund to cover the cost of regulation. The division is required, prior to January 1, 2007, to evaluate the adequacy of the license fee and make a recommendation to the Legislature regarding the optimum level of license fees to properly support regulation.

The bill requires that the facilities-based computer system that the slot machine licensee uses for operational and accounting functions be specifically structured to facilitate regulatory oversight and that the Division and FDLE have complete and continuous access to system. To ensure compliance with this chapter, the system must be designed to allow the Division and the FDLE to monitor at any time and on a real-time basis, the wagering patterns, payouts, tax collection and other operations of the slot machine licensee. The division and FDLE will have the ability to immediately suspend play on a particular slot machine or the entire operation if there is a reasonable suspicion of tampering or other manipulation. The division is granted rule-making authority for the review and approval of the facilities-based computer system to ensure access, security and functionality.

Slot machine licensees are required to maintain permanent daily records of all financial transactions for a period of not less than five years and those records must be available for audit and inspection by the division, the FDLE and other law enforcement agencies during regular business hours. Licensees are required to file monthly reports and must submit an audit of the receipt and distribution of slot machine revenues preformed by an independent CPA within 60 days after completion of the permitholder's pari-mutuel meet.

The bill authorizes the sharing of information among the division, the FDLE, law enforcement agencies having jurisdiction over slot machine gaming or pari-mutuel activities, and any other state or federal law enforcement agency the division or the FDLE deems appropriate.

Qualification of Slot Machine Licensees

The bill establishes as a condition of licensure that the slot machine licensee must continue to be in compliance with chapter 551 as created in this legislation and chapter 550 relating to their pari-mutuel wagering activities, and maintain the pari-mutuel permit and license in good standing.

Chapter 550, F.S., the Florida Pari-mutuel Wagering Act, provides for the regulation of pari-mutuel wagering activities by the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation. Applicants for a permit to conduct pari-mutuel wagering must undergo background investigations and are disqualified if the Division determines the applicant has been convicted of certain offenses. For these purposes the applicant includes: the permitholder, an employee of the permitholder, a sole proprietor; corporate officer or director, general partner, trustee, member of an unincorporated association permitholder, a joint venturer, the owner of more than 5 percent equity interest, and certain others who are able to control the business of the permitholder.

Section 550.1815, F.S., outlines disqualifying offenses, including: a felony in this state; a felony in any other state which would be a felony if committed in this state; a federal felony; a felony under the laws of another state if related to gambling which would be a felony under Florida law; and bookmaking. Slot machine licensees, by virtue of holding a pari-mutuel permit, may not have been convicted of any disqualifying offense.

The bill requires the licensee to be responsible for maintaining and providing current and accurate information of any changes relating to qualifications for the license. Direct or cumulative changes in ownership or interest of a slot machine gaming license of 5 percent or more must be approved by the division. All changes in ownership or interest of less than 5 percent must be reported to the division within

20 days. An exception is created for reporting ownership of 5 percent or less of a publicly traded corporate owner of a slot machine license.

Occupational Licenses

The bill establishes three types of occupational licenses: general, professional, and business.

"General" occupational licenses include food service, maintenance and similar service and support personnel having access to the slot machine gaming area. The annual license fee for general occupational licenses may not exceed $50 and must be paid for by the slot machine licensee.

"Professional" occupational licenses include any person who is authorized to manage, oversee, or otherwise control daily operations of a slot machine facility. The annual license fee for a professional occupational license may not exceed $50.

"Business" occupational licenses include management companies, manufacturers and distributors of slot machines and associated equipment, businesses that sell or provide goods or services associated with slot machine gaming, and any person not an employee of the slot machine licensee that provides maintenance, repair, or upgrades or otherwise services a slot machine or other slot machine equipment. The annual license fee for a business occupational license may not exceed $1,000.

The Division may deny, suspend, revoke or refuse to renew any occupational license if the licensee has:

- Violated ch. 551 or rules of the Division;
- Been convicted of a felony or misdemeanor related to gambling or bookmaking;
- Been convicted of certain criminal offenses including a capital felony, any felony in this state or another state, an offense that would be a felony under Florida law involving arson, drug trafficking, racketeering, etc.;
- Been convicted of a crime involving a lack of good moral character; or
- Had a gaming license revoked by this state or another state for any gaming-related offense.

For these purposes the term "conviction" includes a finding of guilt, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or an entry of a plea of guilty or nolo contendere.

Slot machine occupational licenses may be issued for a three-year period and are not transferable. Each slot machine occupational licensee is required to wear an identification card on their person while in slot machine gaming areas.

The division may deny, revoke, suspend or place conditions on a license if the person or entity has been refused a license or whose license is under suspension or has unpaid fines in another state or jurisdiction.

Fingerprint Requirements

As part of the licensing process individuals and entities applying for an occupational license are required to submit fingerprints for a criminal history records check. Fingerprints are submitted to the FDLE for state processing and to the FBI for national processing.

All fingerprints submitted to the FDLE must be retained by the FDLE and entered into the statewide automated fingerprint identification system [AFIS]. The FDLE is required to check all arrest fingerprints against those retained in AFIS, and any arrest of an occupational licensee will be reported to the division for disciplinary purposes. Each slot machine licensee is required to pay a fee, as established by rule, to cover the cost of fingerprint retention and the ongoing searches.

Since the ongoing searches conducted by the FDLE do not include the FBI database, fingerprints are resubmitted to the FBI every three years after initial licensure and fingerprinting for an updated FBI criminal records check.

The cost of processing fingerprints and conducting the criminal history records check for a general occupational license is required to be borne by the slot machine licensee. The cost of processing fingerprints and conducting the criminal history records check for professional and business occupational licenses is required to be borne by the person being checked.

Facility Security

As a condition of licensure a slot machine licensee is required to implement at least the minimum security requirements as determined by division rule, and any changes to the security plan must be approved by the division. The security plan must include a floor plan, the locations of security cameras and other security equipment that is capable of observing and electronically recording activities in the licensed slot machine facility. The security plan must remain in operation at all times. Security plans of this nature are exempt from public records disclosure pursuant to s. 119.071(4), F.S.

The FDLE and local enforcement agencies have concurrent jurisdiction to conduct investigations of any criminal activity occurring at the slot machine facility and may conduct such investigations in conjunction with the appropriate state attorney. The slot machine facility is required to provide law enforcement with access to the facility and any information and records contained within the facility that are necessary to conduct their investigations.

Slot machine licensees have a common law right to bar any person from the slot machine facility. The bill allows the division to exclude certain persons from a slot machine facility for conduct that would constitute, if the person were a licensee, a violation of chapter 551 or rules of the division.

Integrity of Games

The slot machine licensee must ensure complete and continuous access to the facilities-based computer system that the licensee uses for operational and accounting functions. To ensure compliance with this chapter, the system must be designed to allow the Division and the FDLE to monitor at any time and on a real-time basis, the wagering patterns, payouts, tax collection and other operations of the slot machine licensee. The division and FDLE will have the ability to immediately suspend play on a particular slot machine or the entire operation if there is a reasonable suspicion of tampering or other manipulation. The division is granted rule-making authority for the review and approval of the facilities-based computer system to ensure access, security and functionality.

The slot machine licensee must ensure that each slot machine is protected against manipulation or tampering. The Division and the FDLE have unrestricted access to and right of inspection to any area of the facility where activities related to slot machine gaming are conducted.

Prohibited Relationships and Activities

The bill implements numerous restrictions on relationships and activities of licensees, division personnel, and law enforcement officers.

Manufacturers and distributors of slot machines are prohibited from entering into any contract with a slot machine licensee that provides for any revenue sharing of any kind that is calculated on the basis of a percentage of slot machine revenues. Further, manufacturers, distributors and their employees are prohibited from having any ownership or financial interest in a slot machine license or a business owned by the slot machine licensee.

Division personnel are prohibited from being an officer, director, owner, or employee of any person or entity licensed by the division and are also prohibited from having or holding any interest, direct or indirect, or engaging in any business with any person licensed by the division. Likewise, division personnel and any family member living in the same household are prohibited from playing slot machines at a facility licensed by the division.

Similarly, an occupational licensee or relative living in the same household of the occupational licensee may not wager at any time on a slot machine located at a facility where that person is employed.

No employee of a law enforcement or regulatory agency may be employed by a slot machine licensee or any entity conducting business with the licensee within the designated slot machine gaming area or in any other restricted area that supports slot machine operations. An exception is created for employment that does not involve access to these restricted areas.

Age Restrictions

Section 550.0425, F.S., allows minor children [a person who has not attained the age of 18] to attend pari-mutuel events accompanied by a parent or guardian under conditions and at times determined by each pari-mutuel permitholder. That statute also allows minors to be employed in a pari-mutuel facility except in positions directly involving wagering or alcoholic beverages. This bill prohibits a person under the age of 21 from playing a slot machine, being employed in, or allowed in the slot machine gaming area of a licensed facility. The bill also requires slot machine licensees to post signs within the designated slot machine gaming area advising of this prohibition.

Days and Hours of Operation for Slot Machine Gaming and Pari-mutuel Wagering

This bill allows slot machine gaming to be conducted sixteen hours per day year-round.

This bill specifies that in order to conduct slot machine gaming a licensee must "conduct no fewer than a full schedule of live races or games as defined in s. 550.002(11)."

A "full schedule" is a term coined for the purpose of a pari-mutuel facility conducting intertrack wagering[1] and usually constitutes a lesser number of live races or games than might be conducted under a permitholder's annual license. For purposes of conducting intertrack wagering, a "full schedule" constitutes 40 live regular performances for a thoroughbred permit; 100 live regular performances for a harness track; and 100 live evening or matinee performances for a greyhound permit. For jai alai permitholders 100 live evening or matinee performances constitutes a full schedule; however, that number was increased during the 2005 Regular Session to 150 performances for any jai alai permitholder with slot machines and reduced to 40 performances for specified jai alai permitholders whose handle was less than $4 million during a specified two-year period of time.

This bill allows pari-mutuel permitholders to amend their 2006-2007 pari-mutuel wagering licenses within 60 days of the effective date of this legislation to reflect a different number of operating dates than had previously been requested and granted. The bill also contains an "Act of God" provision which specifies that the number of required live races or games may be reduced by the number of lives races or games which could not be conducted as a direct result of fire, war, hurricanes, or other disaster or event beyond the permitholder's control.

The bill does not impact days or hours of operation for cardrooms.[2]

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.

Alcoholic Beverage Sales

Section 565.02(5), F.S., provides for a special alcoholic beverage license for caterers at pari-mutuel facilities enabling the caterer to sell alcoholic beverages without obtaining the more expensive quota liquor license required by s. 565.02(1), F.S. This bill authorizes the issuance of a caterer's license allowing the sale and service of alcoholic beverages on days the facility is open to the public for slot machine gaming. The bill prohibits complimentary or reduced price alcohol from being served to a person playing a slot machine. All alcohol served to a person playing a slot machine must cost at least the same amount as alcoholic beverages served to the general public at a bar in another part of the facility.

Reports of Gambling Winnings to IRS and Payment of State Owed Debt

Generally, gambling winnings are reportable to the Internal Revenue Service [IRS]. The requirements for reporting and withholding of federal income tax on those winnings depend on the type of gambling, the amount of the gambling winnings, and generally the ratio of the winnings to the wager. The Department of the Lottery is

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[1] s. 550.002(17) defines intertrack wagering to mean "a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, in-state track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal rebroadcast from, another in-state pari-mutuel facility."

[2] Section 849.086, F.S., establishes the criteria for operating cardrooms at licensed pari-mutuel facilities. Cardrooms may only be operated at the location where the permitholder conducts pari-mutuel wagering and may only operate between the hours of 12 Noon and 12 Midnight on days the facility is authorized to accept wagers on live pari-mutuel events during its regular authorized meet. Three of the four pari-mutuel facilities in Broward County currently operate cardrooms.

required to file Form W-2G with the IRS for each person who wins $600 or more in a lottery game. Prize winnings of $1,200 or more from slot machines must be reported to the IRS on Form W-2G.

Before paying a lottery prize of $600 or more, s. 24.115(4), F.S., requires the Department of the Lottery to check the prize winners name against a database of persons owing delinquent child or spousal support and other state-owed debt, such as reimbursement for overpayments of unemployment compensation benefits, overpayments for food stamps, etc. If the person claiming the prize is found to owe delinquent child or spousal support or other state-owed debt the delinquency is deducted from the prize and any remaining funds are then disbursed to the prize winner. The Department of the Lottery maintains a database of this information received from other state agencies which is updated weekly or monthly, depending upon the submitting agency.

Similar to Department of Lottery operations, this bill requires any slot machine prize of $600 or more to be checked against a registry of persons owing delinquent child or spousal support. Any such delinquency will be deducted from the prize winnings and the remaining balance, if any, will be paid to the prize winner.

Purchasing and Employment Opportunities

As a condition of licensure, the bill requires slot machine licensees to maintain a written policy for nondiscriminatory employment and for creating opportunities for the employment of Florida residents and for making purchases from Florida vendors and minorities.

Compulsive Gambling

The bill requires slot machine licensees to implement responsible gaming programs and practices and to train their employees on responsible gaming. Slot machine licensees are required to post signs warning patrons of gambling risks, odds of winning, and informing patrons of a telephone helpline available to provide information and referral services.

The bill requires the division to contract for provision of services related to the prevention of compulsive and addictive gambling. This contract must also include an advertising program to encourage responsible gaming practices and publicize the gambling helpline. In addition to the public advertisements, the advertisements must be made within the slot machine gaming areas. The contract for services must include accountability standards that must be met by the private provider. Failure to meet the accountability standards or other material terms of the contract constitutes a breach of contract and grounds for nonrenewal. The division is authorized to consult with the Department of the Lottery in the development and procurement of the program. The program is funded from a $250,000 fee designated for this purpose and collected annually from each slot machine licensee.

Manufacture, Sale, Possession of Coin-Operated Devices

Section 849.15, F.S., prohibits the manufacture, possession, sale, and transportation of slot machines in Florida. Similarly, federal law [15 U..S.C. ss. 1171-1177 also known as the Johnson Act] prohibits such possession or transportation into a state in violation of that states' law. This bill specifically provides that all shipments of gaming devices, including slot machines or parts thereof, to an eligible facility in any county where slot machine gaming is authorized, are deemed to be legal and exempt from other state and federal prohibitions.

Enforcement and Penalties

A law enforcement officer or a slot machine operator who has probable cause to believe that certain types of theft have occurred at a slot machine facility is authorized to take a person into custody and detain the person in a reasonable manner and for a reasonable time. If the slot machine operator detains a person suspected of such theft the slot machine operator is required to call a law enforcement officer to the scene immediately. This bill allows a law enforcement officer to arrest a person, either on or off the premises and without warrant, upon probable cause.

Any person who resists the efforts of a law enforcement officer or slot machine operator to recover stolen slot machine proceeds and who is subsequently found guilty commits a misdemeanor of the first degree unless the person did not have reason to know that the person seeking to recover the lost proceeds was a law enforcement officer or slot machine operator.

The bill allows the division to exclude certain persons from a slot machine facility for conduct that would constitute, if the person were a licensee, a violation of chapter 551 or rules of the division.

In addition, the bill provides for imposition of the following penalties:

- Revocation or suspension of a slot machine license for the *willful* failure to pay an administrative penalty, pay a required tax, or violation of chapter 551 or rule adopted pursuant thereto;
- Imposition of a $100,000 administrative penalty in lieu of suspension or revocation of a slot machine license for those specified willful violations;
- 3rd degree felony for theft of slot machine proceeds or property by an employee of the slot machine operator or facility, or by an employee of a person or entity contracted to provide services to the operator or facility;
- 3rd degree felony for physical tampering with a slot machine and other fraudulent offenses; and
- $10,000 per day administrative penalty for failure to pay tax, knowingly making or causing another to make a false statement in certain documents or unlawful possession of a slot machine.

In addition to the above specified penalties, the bill adds violations of s. 551.109, F.S., as chargeable offenses under the state's Racketeer Influenced and Corrupt Organization [RICO] Act. Section 551.109, F.S., enumerates prohibited acts such as making false statements in required reports, unlawful possession of a slot machine, skimming of slot machine proceeds, and cheating, and establishes administrative, civil and criminal penalties for those violations.

Fiscal

The bill imposes a 55 percent flat tax on slot machine revenue and requires that the taxes are remitted monthly. These tax revenues are deposited into the Pari-mutuel Wagering Trust Fund for immediate transfer to the Educational Enhancement Trust Fund. The bill specifies that these revenues may not be used for recurring expenditures.

Slot machine licensees are required to post a $2 million bond for the licensee's first year of operation. Annually thereafter the bond may be adjusted upward based on an evaluation by the division of the bond's sufficiency to cover the anticipated state revenues due from the licensee's slot machine operations. The bill specifies, however, that the bond may not be reduced below $2 million.

Upon initial licensure and annually thereafter, slot machine licensees are required to pay a nonrefundable $3 million license fee. Prior to January 1, 2007, the division is required to evaluate this fee and make recommendations to the Legislature on the optimum fee necessary to support the regulation of slot machine gaming.

Persons and businesses associated with slot machine gaming are required to obtain an occupational license from the division. These occupational license fees may not exceed $50 for a general or professional occupational license or $1,000 for a business occupational license.

All license fees, administrative penalties and other assessment are deposited into the Pari-mutuel Wagering Trust Fund.

The bill funds a compulsive gambling prevention program from revenues received from an annual $250,000 fee paid by each slot machine facility.

The slot machine definition specifies that these slot machines are not coin-operated amusement machines as defined in s. 212.02(4), F.S. or described in s. 849.161, F.S., and are not subject to the 4 percent sales tax imposed by s. 212.05(1)(h).

Estimated regulatory costs total $6,295,798 in Fiscal Year 2005-2006, with annualized recurring costs estimated at $8,294,387. In addition, the annual cost associated with the prevention of compulsive and addictive gambling totals $1 million.

To comply with the constitutional requirement that all tax revenue collected from slot machine operations be used to supplement public education funding statewide, this bill exempts slot machine tax revenue from the 7 percent service charge to General Revenue imposed by Section 215.20, F.S.

The Revenue Estimating Conference estimates that the provisions of this bill would generate approximately $158.9 million in FY 2007-08. The conference assumed no revenues would be collected in FY 2005-06 and assigned an indeterminate impact in FY 2006-07. The conference estimates that the provisions of the bill would have a negative $2.1 million impact on local government revenue collections. [see Fiscal Section for more information.]

Preemption

The bill provides that the state has exclusive authority over the conduct of all wagering occurring at a licensed slot machine facility in the state.

Thoroughbred Purses and Breeders Awards

As a condition of licensure a slot machine licensee applicant must have on file with the division a binding written agreement for payment of purses, and a binding written agreement for payment of breeders', stallion, and special racing awards on live thoroughbred races. The agreement may direct the payment of such purses and awards from revenues generated by any wagering or gaming the applicant is authorized to conduct. If an agreement cannot be reached prior to issuance of a slot machine license, or 120 days prior to the scheduled expiration of a slot machine license, either party may request arbitration. If an agreement is not in place within 60 days of the request for arbitration, the matter is immediately submitted to mandatory binding arbitration. No later than 90 days thereafter [or 30 days in the case of a license renewal] the arbitration panel must present a proposed agreement that a majority of the panel believes equitably balances the rights, interests, obligations, and reasonable expectations of the parties. The agreement will be effective until the parties enter into a new agreement or until the last day of the license or renewal period when the process begins anew.

C. SECTION DIRECTORY:

Section 1. The bill creates a new Chapter 551, Florida Statutes, consisting of sections 551.101, 551.102, 551.103, 551.104, 551.105, 551.106, 551.107, 551.108, 551.109, 551.111, 551.112, 551.113, 551.114, 551.116, 551.117, 551.118, 551.119, 551.121, and 551.122.

Section 551.101, F.S., authorizes slot machine gaming at licensed pari-mutuel facilities in Broward or Miami-Dade Counties existing at the time of adoption of the constitutional amendment if the facility conducted live racing or games during both 2002 and 2003 calendar years and if voters in a countrywide referendum have authorized slot machine gaming in that county.

Section 551.102, F.S., consists of subsections (1) – (12) and provides definitions for: distributor; designated slot machine gaming area; division; eligible facility; manufacturer; progressive system; slot machine; slot machine facility; slot machine license; slot machine licensee; slot machine operator; and, slot machine revenues.

Section 551.103, F.S., consists of subsections (1) – (6) and provides the powers and duties of the division and law enforcement. This section requires the division to adopt rules necessary to implement, administer, and regulate slot machine gaming and those rules must include:

- Procedures for applying for licenses;
- Technical requirements and qualifications for licensees;
- Procedures for verifying, accounting, auditing and collection of tax revenue and fees;
- Procedures for regulating, managing and auditing the operation, financial data, and program information of a licensee, including the facilities-based computer system;
- The ability for the division and FDLE to monitor on a real-time basis the wagering patterns, payouts, tax collection and compliance, including the ability to suspend play immediately on a particular slot machine or the entire system;
- Procedures for provision of a $2 million performance bond;
- Procedures for maintenance and submission of specified records, including financial and income records;
- A requirement that the payout percentage of slot machines be no less than 85 percent per facility per day;
- Standards for facility security.

This section also:

- Requires the division to conduct investigations;
- Specifies that the FDLE and local law enforcement have concurrent jurisdiction to investigate criminal violations;
- Provides the division, FDLE, and local law enforcement unrestricted access to the slot machine facility and requires strict compliance with the laws by the licensee;
- Authorizes the division to revoke or suspend licenses; and
- Clarifies that the section does not prohibit certain investigations of criminal activities or restrict access to the slot machine facility or to certain information and records.

Section 551.104, F.S., consists of subsections (1) - (9) and provides licensing standards and qualifications for slot machine gaming licensees. As a condition of licensure and to maintain the license in good standing, a slot machine licensee must:

- Maintain compliance with chapter 550 and 551;
- Conduct no fewer than a full-schedule of live races or games;
- Provide current information on changes in ownership;
- Allow unrestricted access and right of inspection to the division and FDLE;
- Ensure that the facilities-based computer system is designed to facilities regulatory oversight;
- Ensure that each slot machine is protected from manipulation or tampering;
- Submit and maintain a security plan;
- Create written policies for purchase and employment;
- Ensure the slot machine payout percentage is not less than 85 percent per facility per day.

In addition, this section provides that:

- Slot machine licenses are not transferable;
- Permanent daily records of slot machine operations be maintained for not less than a five years;
- Monthly reports of slot machine operations must be submitted to the division;
- An annual audit of the receipt and distribution of all slot machine revenue by an independent CPA be provided to the division;
- The division may share information with law enforcement agencies;
- Delinquent child or spousal support must be withheld from slot machine winnings of $600 or more; and
- No slot machine license or renewal thereof may be issued until the slot machine applicant has a binding written agreement governing the payment of purses and owners', breeders', stallion and special racing awards on live thoroughbred races on file with the division. The agreement requires binding arbitration in certain circumstances.

Section 551.105, F.S., consists of subsections (1) – (3) and provides that slot machine licenses are effective for one year and are renewed annually.

Section 551.106, F.S., consists of subsections (1) – (5) and provides for license fees, tax rate, payment procedures and penalties. This section:

- Establishes a $3 million annual nonrefundable slot machine license fee to cover the cost of investigations, regulation, and enforcement;
- Imposes a 55 percent flat tax on slot machine revenue. This tax revenue is deposited into the Pari-mutuel Wagering Trust Fund for immediate transfer to the Educational Enhancement Trust Fund in the Department of Education;
- Specifies that slot machine tax revenue may not be used for recurring appropriations;
- Requires slot machine tax taxes to be paid monthly and subjects the slot machine licensee to a $10,000 administrative penalty for each day the tax payment is delinquent..

Section 551.107, F.S., consists of subsections (1) – (8) and provides the standards, qualifications and fees for three types of occupational licenses: general, professional, and business.

- The fee for general and professional occupational licenses may be no more than $50 annually and the fee for a business occupational license may be no more than $1,000 annually.
- Disqualifying offenses include violations of chapter 550 or rules enacted pursuant thereto, a previous license revocation in this state or other jurisdiction for any gaming-related offense, and specified crimes. The term conviction includes adjudication withheld and nolo contendere.
- The bill requires ongoing criminal records checks by the FDLE and every three years by the FBI.

- The cost of the initial fingerprint processing and criminal history check for a general occupational license shall be borne by the slot machine licensee and the cost for professional and business occupational licensees shall be borne by the occupational licensee. Each slot machine facility must also pay a fee to the division to cover the cost of fingerprint retention and the ongoing searches.

Section 551.108, F.S., consists of subsections (1) – (6) and outlines prohibited relationships and activities for division personnel and occupational licensees.

- Division personnel may not be employed by or have any business relationship with anyone licensed by the division.
- Manufacturers and distributors are prohibited from entering into revenue sharing arrangements or having an ownership or financial interest in a slot machine licensee.
- Law enforcement officers are prohibited from moonlighting in any restricted area of a slot machine facility if that officer is an employee of a law enforcement or regulatory agency exercising jurisdiction over the slot machine facility.
- Occupational licensees, division personnel, and any relative of an occupational licensee or division personnel living in the same household, are prohibited from playing slot machines at the facility where that person is employed.

Section 551.109, F.S., consists of subsections (1) – (7) and outlines prohibited acts and penalties. This section provides for imposition of the following penalties:

- 3rd degree felony for theft of slot machine proceeds or property by an employee of the slot machine operator or facility, or by an employee of a person or entity contracted to provide services to the operator or facility; for physical tampering with a slot machine; and other fraudulent offenses;
- $10,000 per day administrative penalty for intentionally making or causing another to make a false statement in certain documents or unlawful possession of a slot machine.

Section 551.111, F.S., provides that slot machines manufactured, sold, distributed, possessed or operated according to chapter 551 are legal.

Section 551.112, F.S., authorizes the division to exclude certain persons from the facility of a slot machine licensee:

- For conduct that would constitute, if the person were a licensee, a violation of this chapter;
- Any person that has been ejected from a slot machine facility in this state; or
- Any person who has been excluded from a gaming facility in another state by the regulatory agency exercising regulatory jurisdiction in that state.

A slot machine licensee maintains the right to bar any patron from their facility absolutely.

Section 551.113, F.S., consists of subsections (1) – (3) and prohibits a person under the age of 21 from playing slot machines or being employed in a slot machine gaming area and requires the posting of signs concerning the age to play.

Section 551.114, F.S., consists of subsections (1) – (5) and establishes standards for the slot machine gaming area of a slot machine licensee. This section:

- Limits the number of slot machines to 1,000 per facility;
- Requires the display of and wagering on pari-mutuel races or games in the designated slot machine gaming areas;
- Requires posting of warnings, odds of winning, and a telephone hotline;
- Requires slot machine gaming areas to be contiguous and connected to the live gaming facility; and
- Requires the slot machine licensee to provide office space to the division and the FDLE.

Section 551.116, F.S., authorizes slot machine gaming to be conducted daily throughout the year for a maximum of 16 hours per day.

Section 551.117, F.S., provides that a slot machine license may be revoked or suspended for willful violations of chapter 551. In lieu of revocation or suspension, a slot machine licensee may be fined up to $100,000 for each count or separate offense.

Section 551.118, F.S. consists of subsections (1) – (3) and provides for a compulsive or addictive gambling prevention program.

- Slot machine licensees are required to offer training to their employees on responsible gaming and work with a compulsive or addictive gambling prevention program on ways to recognize problem gaming situations and implement responsible gaming programs and practices.
- The division is required to enter into a contract for provision of services related to the prevention of compulsive and addictive gambling. This contract shall also include an advertising program to promote responsible gaming practices and advertise a gambling telephone help line. These advertisements must also be made inside the designated slot machine gaming areas. The contract must include accountability standards to be met by the private provider.
- The compulsive or addictive gambling program is funded from an annual $250,000 regulatory fee paid by each slot machine licensee to the division.

Section 551.119, F.S., authorizes a caterer's license allowing the sale of alcoholic beverages on days the facility is open to the public for slot machine game play.

Section 551.121, F.S., consists of subsections (1) – (6) and enumerates prohibited activities and devices in the slot machine gaming facility including a prohibition on the service of complimentary or reduced-cost alcoholic beverages to patrons playing a slot machine.

In addition, this section prohibits certain financial transactions, including:

- Slot machine licensees may not make any loan, provide credit, or advance cash in order to enable a person to play a slot machine;
- ATMs may not be located within the facilities of a slot machine licensee;
- Slot machine licensees may not accept or cash any personal, 3rd party, corporate, business, or government-issued check from any person; and
- Progressive games are prohibited.

This section contains a limitation on the slot machine definition provided in s. 551.102(7), F.S. by specifying that slot machines may accept only "tickets or paper currency or an electronic payment system" for wagering and may only make payouts in the form of tickets. The use of coins, credit or debit cards, tokens, etc. is specifically prohibited; however, an electronic credit system may be used for receiving wagers and making payouts.

Section 551.122, F.S., provides for rulemaking.

Section 2. Amends s. 849.15, F.S., to create an exception to the prohibition of possessing or transporting slot machines in the state. The bill specifically provides that all shipments of gaming devices, including slot machines, or parts thereof, to an eligible facility in any county of the state where slot machine gaming is authorized are deemed to be legal and exempt from state and federal prohibitions.

Section 3. Amends s. 895.02, F.S., the state's Racketeer Influenced and Corrupt Organization [RICO] Act, to classify violations of s. 551.109, F.S., as racketeering activity or constituting an unlawful debt. Section 551.109, F.S., enumerates prohibited acts such as making false statements in required reports, skimming of slot machine proceeds, and cheating, and establishes administrative, civil and criminal penalties for those violations.

Section 4. Preempts all regulation of slot machine gaming to the state.

Section 5. Provides an appropriation.

Section 6. Amends subsection (1) of s. 215.22, F.S., to exempt slot machine revenue from General Revenue service charge.

Section 7. Provides that the act will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimates that the provisions of this bill would generate approximately $158.9 million in FY 2007-08. The conference assumed no revenues would be collected in FY 2005-06 and assigned an indeterminate impact in FY 2006-07.

		FY 2006-07 Cash	FY 2007-08 Cash
General Revenue-Sales Tax		(Indeterminate)	($10.4)
State Trust:			
EETF Lottery Loss		(Indeterminate)	($8.7)
EETF Slot machine revenue tax		Indeterminate	$165.0
Parimutuel Wagering Trust Fund Gaming License		$12.0	$12.0
Parimutuel Wagering Trust Fund Gambling Regulatory Fee		$1.0	$1.0
Occupational License Fees		Indeterminate	Indeterminate
Total State Impact		Indeterminate	$158.9, plus Occupational License Fees

2. Expenditures:

Regulatory Provision:

The following fiscal-impact information has been estimated for the state cost associated with the regulatory, oversight, and licensing requirements imposed by this legislation. Full-time equivalent positions (FTE) and the impact for Fiscal Year 2005/06 represents partial-year costs.

	FTE	Salary Rate	FY2005/06	FY2006/07
Operating:				
Florida Department of Law Enforcement (FDLE)				
Operating Trust Fund	39	1,619,738	$2,160,660	$3,035,981
Department of Business & Professional Regulation (DBPR)				
Division of Pari-mutuel Wagering	41	1,637,132	$1,846,717	$2,969,985
Office of the General Counsel	2	90,455	900,493	271,858
Central Service Operations	3	82,755	48,844	132,321
Transfer to FDLE	-	-	2,160,660	3,035,981
Total – All Funds	46	1,810,342	$4,956,714	$6,410,145
Pari-mutuel Wagering Trust Fund			$4,007,377	$6,005,966
Administrative Trust Fund			$ 949,337	$ 404,179
Non-Operating:				
Department of Business & Professional Regulation				
Service Charge to General Revenue			$ 899,360	$ 899,360
Transfer of Fingerprint Fees			226,800	226,800
Internal Transfer for Direct Costs			1,162,261	1,162,261
Total – Pari-mutuel Wagering Trust Fund			$2,288,421	$2,288,421
Total – Department of Business & Professional Regulation			$7,245,135	$8,698,566
Total Operating & Non-Operating:				
Pari-mutuel Wagering Trust Fund (DBPR)			$6,295,798 *	$ 8,294,387

Administrative Trust Fund (DBPR)	949,337	404,179
Operating Trust Fund (FDLE)	2,160,660	3,035,981
Total All Funds	$9,405,796	$11,734,547

* Due to internal funds transfers, total trust funds exceed actual disbursement of regulatory fees. Total costs from the Pari-mutuel Wagering Trust Fund represent the total cost of the regulatory program.

Compulsive and Addictive Grambling Provision:

Department of Business & Professional Regulation		
Contractual Services – Compulsive & Addition Prevention		
Pari-mutuel Wagering Trust Fund	$1,000,000	$1,000,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill would have the following impacts on local governments:

		FY 2006-07 Cash	FY 2007-08 Cash
Revenue Sharing		(Indeterminate)	($.3)
Local Government Half Cent Revenue Sharing		(Indeterminate)	($.9)
Local Option Sales Tax		(Indeterminate)	($.9)
Total Local Impact		(Indeterminate)	($2.1)

2. Expenditures:

Local governments and 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.

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 million in slot machine revenues and 2.0 percent of revenues above $250 million; and, 2) For the municipalities where the facilities are located, 1.7 percent of the first $250 million in slot machine revenue and 2.5 percent above $250 million. Some adjacent communities, for example the City of Hollywood, have expressed a concern that these agreements do not adequately address their concerns and anticipated required expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The degree to which private individuals or businesses [including existing tourist destinations and attractions, Indian gaming facilities, and cruises-to-nowhere] located 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:

In addition to the regulatory costs associated with slot machine operations, 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], mental health and addiction treatment costs, among others.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The Division of Pari-mutuel Wagering and the Department of Law Enforcement are granted rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Recent Litigation

Subsequent to adjournment of the 2005 Regular Session several pari-mutuel facilities filed suit in Broward County asking the court to declare that the pari-mutuel facilities are entitled to transport, possess, install, and operate slot machines and to permanently enjoin the State Attorney from prosecuting these facilities for doing so in Broward County.[3]

Declaratory and injunctive relief was granted and the State Attorney was permanently enjoined from initiating criminal or civil action against the plaintiffs for transporting, possessing, installing, or operating slot machines on or after July 1, 2005. Moreover, the judge retained jurisdiction to allow the Broward County Commission to enact rules and regulations to implement the constitutional amendment.

The State Attorney's Office in Broward County appealed the Circuit Court's order to the 4th District Court of Appeal. The appellate court refused to reinstate a stay pending appeal that the Circuit Court had vacated. Thereafter, the appellate court granted a motion to expedite the appeal and scheduled oral argument for January 3, 2006.

Pursuant to that ruling, the Broward County Board of County Commissioners contracted with Gaming Laboratories International [GLI], an independent gaming device and systems test laboratory, to prepare draft regulations which include a comprehensive set of rules, regulations and internal control procedures and provide an overview of actions and resources required for the County to regulate slots. The Broward County Commission has not acted to implement these regulations at this date.

Indian Gaming

There are currently seven Tribal casinos operating in Florida, including two recently opened Hard Rock casinos in Hollywood and Tampa. The Seminole and Miccosukee Tribes currently operate tribal casinos in Broward, Collier, Glades, Hillsborough, Miami-Dade and Pasco counties where they offer gaming on various card games, bingo, and electronic bingo games. In the past 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.

[3] *Hartman & Tyner, Inc. et al. v. Satz,* Case No. 05-07900 (13)

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[4] [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, such as baccarat 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 pari-mutuel wagering on horses, dogs and jai alai, house-banked card games, casino games such as roulette, craps and keno, and slot machines. Electronic games of chance, such as video poker, are also considered Class III games.

IGRA provides that a tribe may not legally conduct Class III gambling until it reaches agreement with a state under a state-tribal compact and provides procedures for the tribe to pursue should an agreement not be reached. Those procedures include action in a U.S. District Court, mediation, and involvement by the Secretary of the Interior. The efficacy of this remedy for the tribes is questionable because the U. S. Supreme Court held in 1996 that the 11th Amendment provides the state sovereign immunity against suit by the tribe.[5] In that litigation the State of Florida and the Seminole Tribe of Florida were unable to reach agreement on a requested state-tribal compact resulting in prolonged litigation and the Secretary of the Interior contemplating the implementation of rules allowing the Seminole Tribe to proceed.

In light of passage of Art. X, Sec. 23, both the Miccosukee Tribe of Florida[6] and the Seminole Tribe of Florida[7] have submitted formal requests to the Governor to begin compact negotiations for Class III gaming.

Debt Service on Bonds

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 machine revenue 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

[4] 25 U.S.C, chapter 29

[5] See *Seminole Tribe of Florida v. State of Florida*, 517 U.S. 44 (1996)
[6] See letter from Dexter Lehtinen, Tribe Counsel, dated November 4, 2004
[7] See letter from Mitchell Cypress, Chairman of Tribal Council, dated March 22, 2005

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.]

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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 29B State Minimum Wage
SPONSOR(S): Simmons
TIED BILLS: **IDEN./SIM. BILLS:** SB 18B

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	17 Y, 0 N	Hogge	Liepshutz
2) Commerce Council	13 Y, 0 N	Hogge	Bohannon
3)			
4)			
5)			

SUMMARY ANALYSIS

On November 2, 2004, the voters approved Constitutional Amendment 5 (hereinafter referred to as "amendment"), creating a state minimum wage effective six months after the date enacted by the voters. This new state minimum wage took effect on May 2, 2005. The amendment sets the wage at $6.15 per hour and provides for annual adjustments. The amendment prohibits retaliation against persons exercising rights under the amendment and provides an extensive set of remedies. Although, according to the terms of the amendment, "implementing legislation is not required to enforce this amendment," the amendment does authorize the Legislature to "adopt any measures appropriate for the implementation of this amendment."

This bill incorporates provisions from the amendment and supplements those with statutory provisions in creating a new act entitled the "Florida Minimum Wage Act." The bill accomplishes the following:

- In accordance with the opinion of the Florida Supreme Court in the ballot review case, the bill limits the state minimum wage to employees eligible to receive the federal minimum wage; it also incorporates by reference sections 213 and 214 of the federal Fair Labor Standards Act relating to the employment of workers with disabilities;
- It codifies the use of the U.S. Consumer Price Index for the South Region by the Agency for Workforce Innovation (AWI) as the applicable index for determining the annual adjustments to the state minimum wage;
- It provides direction to the agencies for providing notice of the adjusted state minimum wage;
- It requires employees to notify employers and give them 15 days to resolve any claims for unpaid minimum wages before filing suit;
- It limits damages to those specified in the amendment, includes a good faith limitation on the amount of liquidated damages, and imposes certain measures pertaining to class action suits; and
- The bill restricts the authority of the AWI, to that expressly provided for in the amendment and expressly authorized by the Legislature.

The fiscal impact of the bill on state and local government is minimal and results from the means of publication specified to carry out the publication requirement in the amendment. The AWI estimates the fiscal impact to be $168,129 for FY 2006-07 for employer notification responsibilities. However, AWI would only be required to implement these responsibilities to the extent funded in the General Appropriations Act. Any fiscal impact resulting from the increase in the state minimum wage results from the amendment, not this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--The additional government included in the bill is almost exclusively a function of the amendment the bill is supplementing. It actually limits the ability of the Agency for Workforce Innovation (AWI) to exercise any authority related to the state minimum wage beyond that expressly provided in the amendment.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

On November 2, 2004, the voters approved Constitutional Amendment 5 (hereinafter referred to as "amendment"), creating a state minimum wage effective six months after the date enacted by the voters. This new state minimum wage took effect May 2, 2005. That provision is now codified at s. 24, art. X, State Constitution. The amendment sets the wage at $6.15 per hour for "employees," as defined under the federal Fair Labor Standards Act (FLSA), with an annual adjustment based on the increase in the U.S. Consumer Price Index for urban wage earners. The amendment directs the AWI to publish the amount of the initial and adjusted state minimum wage.

The amendment prohibits retaliation against persons exercising rights under the amendment. The amendment provides for enforcement by creating a private cause of action with specific remedies, in addition to authorizing the attorney general or other designated official to bring a civil enforcement action. The amendment expressly authorizes class actions as a means to enforce the amendment.

Although, according to the terms of the amendment, "implementing legislation is not required to enforce this amendment," the amendment does authorize the Legislature and the AWI to "adopt any measures appropriate for the implementation of this amendment." The amendment states that interpretations and guidance developed under the FSLA be used in construing the amendment.

The federal minimum wage stands at $5.15 per hour and is established in section 6 of the FLSA. The FLSA defines key terms such as "employer" and "employee," establishes standards for employers and employees, identifies prohibited acts, and specifies penalties and enforcement measures.

Section 16 of the FLSA punishes willful violations with fines and subjects those that violate the act with payment of unpaid wages and liquidated damages. An employer that retaliates against an employee is also subject to "such legal or equitable relief as may be appropriate." The U.S. Secretary of Labor may also sue for injunctive relief against employers. As amended by the Portal-to-Portal Act, 61 Stat. 84, the court may modify the amount of liquidated damages if an employer shows to the "satisfaction of the court" that the conduct giving rise to the civil action occurred in "good faith" and based on "reasonable grounds."

Effect of Proposed Changes

This bill incorporates provisions from the amendment and supplements those with statutory provisions in creating a new act entitled the "Florida Minimum Wage Act."

One, in accordance with the opinion of the Florida Supreme Court in the ballot review case, the bill provides that the state minimum wage only applies to employees eligible to receive the federal minimum

wage and provides that the minimum wage applies to hours worked in Florida. It also incorporates by reference sections 213 and 214 of the Fair Labor Standards Act, relating to the employment of workers with disabilities.

Two, it adopts the U.S. Consumer Price Index for the South Region as the applicable index for determining the annual adjustments to the state minimum wage. This is a codification of the index currently being used by the AWI for this purpose.

Three, it directs the AWI and the Department of Revenue to annually publish the adjusted state minimum wage on their respective internet homepage and requires the AWI to notify employers included in the unemployment compensation database of the adjusted state minimum wage to the extent funded in the General Appropriations Act.

Four, it requires employees to notify employers and give them 15 days to resolve any claims for unpaid wages before filing suit.

Five, it limits damages to those specified in the amendment, includes a good faith limitation on the amount of liquidated damages consistent with federal provisions, and imposes certain measures pertaining to class action suits.

Finally, the bill restricts the authority of the AWI to that expressly provided for in the amendment and expressly authorized by the Legislature.

C. SECTION DIRECTORY:

Section 1. Amends s. 95.11, F.S., to include the statutes of limitation provided for in s. 24, Art. X, State Constitution.

Section 2. Creates s. 448.110, F.S., providing for the "Florida Minimum Wage Act."

Section 3. Designates ss. 448.01 – 448.110 as Part I of chapter 448, Florida Statutes, and entitled "Terms and Conditions of Employment."

Section 4. Provides a severability clause.

Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   The fiscal impact of the bill on the state is minimal and results from the means of publication specified to carry out the publication requirement in the amendment. The AWI estimates the fiscal impact to be $168,129 for FY 2006-07 and beyond for the required mailing to employers. However, AWI would only be required to implement these responsibilities to the extent funded in the General Appropriations Act. SEE II.D., FISCAL COMMENTS. Any additional fiscal impact on the state resulting from an increase in the minimum wage is a function of the amendment, not this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None

2. Expenditures:

Any fiscal impact on local government as employers results from the amendment, not the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Any fiscal impact on employers results from the amendment, not the bill.

D. FISCAL COMMENTS:

The cost associated with the required mailing to employers assumes 449,258 employers multiplied by the cost of first class postage, printing, paper, and envelopes. The estimate for FY 2006-07 and beyond contemplates an increase in postage costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

B. EFFECT OF PROPOSED CHANGES:

C. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

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