



The Florida Senate

Interim Project Report 2005-155

November 2004

Committee on Regulated Industries

Senator Dennis L. Jones, D.C., Chair

LEGALIZED GAMBLING IN FLORIDA - THE COMPETITION IN THE MARKETPLACE

SUMMARY

Legalized gaming in Florida faces challenges. Attendance and revenue have been on the decline in the pari-mutuel facilities in Florida since the late 1980s and the Lottery continues to face revenue challenges. Competition in the marketplace has contributed to these declines and challenges. The competition, which includes Indian tribal casinos, Cruises to Nowhere, gaming in Mississippi, and the Lottery (for the pari-mutuel industry), generate revenues that mostly goes untaxed and unregulated by the state. The Lottery also faces possible competition from the authorization of slot machines in Miami-Dade and Broward counties.

The pari-mutuel industry has made strides in maintaining a presence in Florida. The introduction of simulcast wagering and cardroom pot increases has contributed to an increase in revenues for the tracks and frontons. However, attendance and tax revenues have continued to decline. Part of the decline in tax revenues can be attributed to the tax breaks received from the Florida Legislature in 2000. This apparently has been of benefit to the thoroughbred and harness industries. The decline in attendance and revenue has also been attributed to competition in the marketplace.

Recommendations from Office of Program Policy Analysis and Government Accountability (OPPAGA) to improve the revenues to the pari-mutuel industry, along with the industry's desire, have been to add video lottery terminals to the facilities. With the passage of Amendment 4, this is a pending issue in the Miami-Dade and Broward pari-mutuel facilities. Authorizing additional games will bring in sufficient additional revenue to allow the Legislature to make policy decisions regarding what type of gaming should be played in Florida.

The report recommends that if the Legislature wants to address the apparent disparity in gambling opportunities between the legalized and taxed pari-mutuel industry and other non-taxed competition, it

should allow video lottery terminals in all pari-mutuel facilities. The report also recommends that a possible source of revenue could be generated by an admission fee for patrons on all Cruises to Nowhere .

BACKGROUND

Horseracing and dogracing were legalized by the Legislature in Florida in 1931, overriding a veto of the legislation by Governor Carlton.¹ The pari-mutuel industry has proven to be a substantial source of entertainment and revenue to the state over the past 70-plus years. The pari-mutuel industry has grown from six dog tracks and three horse tracks in 1931 to 18 dogtracks, seven jai alai frontons, five thoroughbred and one harness track in 2004. However, attendance and revenues have steadily declined since the late 1980s. The decline has been attributed to increased competition from the state lottery, seven tribal casinos, including two Hard Rock casinos in Hollywood and Tampa, gambling cruise ships (Cruises to Nowhere), and gaming in Mississippi.²

The Florida State Lottery began in 1987 as a way to generate significant additional funds for education. The Lottery revenues have continued to increase over the years. Legislation allowing them to increase payouts for scratch-off games and a change in their on-line vendor has had a positive impact on the revenues generated.³ However, the Lottery also faces similar challenges as

¹ *A Review of the Method of Granting Additional Pari-Mutuel Operation Days*, Florida Senate Committee on Commerce, March 1987 and Chapter 14832, L.O.F. (1931).

² *Justification Review Additional Steps Could be Taken to Aid Pari-Mutuel Industry and/or Cut Regulatory Cost*, Report No. 03-56, Office of Program Policy Analysis and Government Accountability, Florida Legislature, October 2003.

³ *Florida Lottery Makes Progress by Implementing Many Justification Review Recommendations*, Report No. 04-01 Office of Program Policy Analysis and Government Accountability, Florida Legislature, January 2004.

the pari-mutuel industry which have been attributed to competition from the tribal casinos, Cruises to Nowhere, and Amendment 4, adopted by the voters at the General Election in 2004.⁴

Cruises to Nowhere began in Florida in 1984 with the operation of one ship. The industry has now grown to 17 ships operating out of every major port on the Florida peninsula excluding the Panhandle. Though the gambling revenues are not taxed by the state, taxes are collected on alcoholic beverages and by the drink tax. In addition, sales and use taxes are paid for purchases of tangible personal property, purchases of diesel fuel, and on admission charges.⁵

Section 849.231, F.S., permits certain prescribed gambling instruments or apparatus to be held, sold, transported, or manufactured by persons who have registered with the United States government pursuant to the provisions of the "Johnson Act," so long as the described implements or apparatus are not displayed to the general public, sold for use in Florida or held or manufactured in contravention of the requirements of the "Johnson Act."⁶

Indian gaming started in Florida in 1979 with bingo halls.⁷ In 1981, a federal court ruled that the statute permitting bingo games could not be enforced against the Seminole Indian Tribe and therefore Indians as well as non-Indians could play bingo at the tribal facility.⁸

In 1987, the U.S. Supreme Court confirmed the authority of tribal governments to establish gaming operations independent of state regulation, provided that the state in question permits some form of gaming.⁹ Congress passed the Indian Gaming Regulatory Act of 1988 (IGRA)¹⁰ in order to provide a statutory basis for the operation and regulation of gaming by Indian tribes.¹¹ The act permits states to

determine the scope and extent of tribal gaming through tribal-state compacts for Class III gaming and gives the tribes regulatory authority over Class I and II gaming.¹²

Each of the three classes of games provided in IGRA has different regulatory schemes. Class I gaming is defined as traditional Indian gaming and social gaming for minimal prizes.¹³ Regulatory authority over Class I gaming is vested exclusively in tribal governments.¹⁴

Class II gaming includes bingo and card games. Bingo is defined as a game of chance (whether or not electronic, computer or other technological aids are used) and, if played in the same location as bingo, includes pull-tabs, punchboards, tip jars, instant bingo, and other games similar to bingo. Card games are defined as those that are explicitly authorized by the laws of the state or are not explicitly prohibited by the state. Slot machines or electronic facsimiles of any game of chance are specifically excluded from the definition of Class II games.¹⁵

Class III gaming includes all forms of gaming that are neither Class I nor II.¹⁶ These games include casinos games, such as roulette, craps, and keno, slot machines, banking card games, any sports betting and pari-mutuel wagering, and lotteries.¹⁷

Before a tribe may lawfully conduct Class III gaming, the following conditions must be met: (1) the particular form of Class III gaming that the tribe wants to conduct must be permitted in the state in which the tribe is located; (2) the tribe and the state must have negotiated a compact that has been approved by the Secretary of the Interior, or the Secretary must have approved regulatory procedures; and (3) the tribe must have adopted a tribal gaming ordinance that has been approved by the Indian Gaming Commission or its chairman.¹⁸

The compact may contain any subjects directly related to the operation of gaming activities. A state or political subdivision does not have authority to impose taxes, fees, charges, or other assessments upon tribes which seek to operate Class III gaming and is prohibited from

⁴ *Lottery Faces Challenges Meeting Future Revenue Demands, Continues Work to Improve Efficiency*, Draft Report No. 04-xx, Office of Program Policy Analysis and Government Accountability, Florida Legislature.

⁵ See ss. 561.501, 563.05, 564.06, and 565.12, F. S.

⁶ 105 U.S.C. 1171-77, and 18 U.S.C. 1081-83.

⁷ *Seminole Tribe of Florida v. Butterworth*, 491 F. Supp. 1015 (S.D.Fla. 1980).

⁸ *Seminole Tribe of Florida v. Butterworth*, 658 F. 2d 310 (5th Cir. 1981).

⁹ *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

¹⁰ 25 U.S.C. 2701, U.S.C. et seq.

¹¹ *Seminole Tribe of Florida v. State of Florida*, 517 U.S. 44, (1996).

¹² *Supra* at n. 10.

¹³ 25 U.S.C. s. 2702(6).

¹⁴ 25 U.S.C. s. 2710(a)(1).

¹⁵ 25, U.S.C. s. 2702(7).

¹⁶ 25 U.S.C. s. 2702(8).

¹⁷ 25 CFR s. 502.4.

¹⁸ 25 U.S.C. s. 2710(d).

refusing to negotiate based on the lack of authority in such state, or its political subdivision to, impose such a tax, fee, charge, or other assessment.

A tribe may agree to pay assessments to a state or a political subdivision to defray the costs of state regulation of its Class III gaming activities and may agree to a payment in lieu of taxes to the state in amounts comparable to amounts assessed by the state for comparable activities.¹⁹

There are currently seven Florida tribal casinos offering bingo (including electronic bingo), and cardgames. Revenues generated by these tribes are unavailable but revenue estimates have been released on a regional basis by the Indian Gaming Commission. Florida falls into Region VI which includes Alabama, Connecticut, Florida, Louisiana, Mississippi, North Carolina and New York. There are 24 Indian Gaming Operations in this region with gaming revenues at over \$4 billion for Fiscal Year 2003-04. These revenues are untaxed by the state.

The passage of Amendment 4 to Florida's State Constitution in the 2004 General Election may provide an additional revenue source to the state's educational funding. The amendment authorizes Dade and Broward counties to hold referenda to determine whether slot machines should be allowed in existing, licensed pari-mutuel facilities.

These slot machines are considered Class III gaming under IGRA and open up the possibility for the tribes to negotiate a compact allowing slots in the tribal casinos. Compacts from other states can be used as an example of how the states could generate revenues if the states allow some sort of exclusivity to the tribes.

It appears that only pari-mutuel facilities in Dade and Broward County would reap any benefit from these machines. According to a survey of the pari-mutuel industry in 2004, suggestions to improve attendance and revenue include having these slots at all the pari-mutuel facilities. Other suggestions have been to exclude the smoking ban and limit regulation on the facilities to allow them to compete with each other and the outside gaming influences.

METHODOLOGY

Committee staff reviewed state and federal statutes, legislative history, and case law on the gaming industry. Staff met with staff of the state agencies responsible for overseeing the various gaming provisions in the statutes. Staff contacted representatives from The Department of Interior and the Indian Gaming Commission to ascertain the status of Indian gaming in Florida. Representatives for the gaming industry in Mississippi were contacted to obtain statistics on the gaming industry in that state. Staff also reviewed reports on gaming in Florida and other national organizations.

FINDINGS

Legalized Gambling in Florida

The impetus to finally legalize gambling in Florida has been attributed to the Great Depression of the 1930's and the Florida land boom of 1924-25. A revenue source was needed to finance public and social services and the revenues from gambling could provide that assistance.²⁰ In 1935, jai alai was added to the list of legalized pari-mutuel activities.²¹ Slot machines were also legalized from 1935 -1937.²²

Distance restrictions and days of operation for tracks and frontons have changed over the years as a way of establishing fair competition. The introduction of simulcast wagering in 1984, cardrooms in 1996, and a subsequent increase in pot limits at the cardrooms, have also helped to increase revenues. Tax breaks have also been given to the industry as a means to keep them competitive.

A Declining Industry

Despite the introduction of simulcast wagering, tax reductions, and cardrooms, the pari-mutuel industry has seen a consistent decrease in its pari-mutuel handle and its revenues to the state. The amount of money wagered at the facility has also declined though not as dramatically as attendance. The only increase shown has been an increase in wagering on simulcast events.²³

Several pari-mutuel facilities have also gone out of business over the past decade including Volusia, Tampa and Palm Beach Jai Alai as well as Seminole Greyhound Park. Hialeah Park has not scheduled races

¹⁹ *Id.*

²⁰ *Supra* at n. 1.

²¹ Chapter 17074, L.O.F., 1935.

²² Chapter 17256, L.O.F. 1935.

²³ *Supra* at n. 3.

since Fiscal Year 2001-02 and a recent opinion from the Division of Administrative Hearings recommended that a final order be issued revoking Hialeah Park's thoroughbred racing permit and denying its application for a racing license for the 2003-2004 thoroughbred racing season.²⁴

The pari-mutuel industry peaked in Fiscal Year 1987-88 with over \$2 billion in total handle and \$125.3 million in taxes to the state²⁵ Since Fiscal Year 1987-88, the amount of state tax revenue has declined 76.9 percent, from \$125.3 million to \$28.9 million in Fiscal Year 2003-04.²⁶

The total handle in Fiscal Year 2003-04 was \$1.4 billion. The total handle for the industry has declined 30 percent since Fiscal Year 1987-88. The total handle for the greyhound industry was \$1.02 billion in Fiscal Year 1987-88 and \$491.9 million in Fiscal Year 2003-04, for a decline of 52 percent. The jai alai industry's total handle for Fiscal Year 1987-88 was \$430.3 million and for Fiscal Year 2003-04, the handle was \$93.8 million. The jai alai industry handle declined 78 percent during that time. The total handle for the thoroughbred industry in Fiscal Year 1987-88 was \$466.5 million and the industry's handle in Fiscal Year 2003-04 was \$758.9 million for an increase of 63 percent. The harness industry has also had an increase in its handle from \$85.1 million in Fiscal Year 1987-88 to \$95.1 million in Fiscal Year 2003-04. This is an increase of 12 percent.²⁷

The Legislature changed the operating conditions for cardrooms in 2003. The OPPAGA estimate that these changes will increase facility gross receipts by \$8.3 million and generate \$879,000 in additional state revenue for Fiscal Year 2003-04.²⁸

Industry survey

Staff sent a survey to the 27 existing pari-mutuel facilities in Florida asking questions about each facility's experience and perception of what changes have occurred in the industry to cause its decline. The

²⁴ *DBPR vs. Hialeah Racing Association*, Case No. 03-1459, Division of Administrative Hearings.

²⁵ *Total to state 44/45 to 03-04*, Division of Pari-mutuel Wagering, Department of business and Professional Regulation.

²⁶ *Id.*

²⁷ *Total pari-mutuel handle to state 44-45 to 03-04*, Division of Pari-mutuel Wagering, Department of Business and Professional Regulation.

²⁸ *Supra* at n. 2

survey also sought information on how to increase profits, handle, and attendance for the facilities. Seventeen of the 27 facilities provided responses.

A majority of the facilities have experienced a decrease in attendance, handle and profitability. A majority of the respondents attributed these changes to competition from the Lottery, Cruises to Nowhere, Indian gaming, competition from other entertainment, and their inability to expand technology. Other responses included taxes, simulcasting, internet gaming, adult arcades, casinos in Mississippi, and competition from within the industry.

When asked if any legislative changes had affected attendance, handle, and profitability, the responses were varied. The smoking ban and the lottery were cited as having an adverse affect on all three. Changes to the cardroom pot limits and the reduction in taxes were cited as having a positive affect.

All facilities indicated that they would support an expansion in gambling. Almost 100 percent of the respondents stated that video Lottery Terminal legislation would have a positive affect on the industry.

The Lottery

In 1986, Florida voters approved a constitutional amendment authorizing the state to operate a lottery. The 1987 Legislature subsequently enacted ch. 87-65, L.O.F., codified at ch. 24 F.S., known as the Florida Public Education Lottery Act. The act created the Department of Lottery and charged it with operating the Lottery.²⁹

The Department of the Lottery reports that Lottery revenues have increased from \$2.1 billion in Fiscal Year 1998-99 to more than \$3 billion in Fiscal Year 2003-04. Transfers to the Education Enhancement Trust Fund have increased from \$807 million in Fiscal Year 1998-99 to, for the second consecutive year, more than \$1 billion in Fiscal Year 2003-04.³⁰

Despite these projected estimates of increased revenue for the Lottery, OPPAGA reports that the Lottery is still facing challenges to maintain its revenue growth

²⁹ Section 24.102(2), F.S.

³⁰ *The Florida Legislature Lottery Revenues Executive Summary*, Office of Economic & Demographic Research October, 2004. The total estimates are \$1.029 billion in Fiscal Year 2004-05 and \$1.072 billion in Fiscal Year 2005-06.

despite the improvements that have been made. OPPAGA reports that the Lottery is facing competition from the tribal casinos, the Cruises to Nowhere, and Amendment 4 adopted at the 2004 General Election.³¹

OPPAGA recommends options to increase revenues and transfers to education, these include: 1) continuing to create new games or changing on-line game prize payouts; 2) continuing to explore other game options; 3) increasing the number and quality of the retailers; 4) increasing advertising.

Competition to the Pari-mutuel Industry and the Lottery

Cruises to Nowhere

Cruises to Nowhere are currently operating in Florida and are authorized under the "Johnson Act."³² The industry in Florida has grown from one ship in 1984 to 17 ships today with an estimated 4.4 million passengers.³³

In 2002, the industry reportedly contributed in excess of \$17.4 million in federal, state and local taxes with state taxes and fees totaling \$5.4 million and local taxes and fees totaling \$1.1 million. The industry also contributed to Florida's economy by employing 2,854 full-time and 266 part-time employees, with a total payroll of \$63.3 million and spent in excess of \$82 million on goods and services purchased from local vendors. Deep water port fees totaled \$17.8 million and \$4.9 million was paid to landlords of marinas.³⁴

Currently there are three pending Florida Supreme Court cases in which members of the cruise industry are challenging whether the State of Florida is entitled to prorate the tax on concessions and gaming equipment.³⁵ Florida courts have previously upheld the state's authority to tax payments involving gaming equipment and concessions since the installation and maintenance of the equipment occurs in Florida.³⁶

³¹ *Supra* at n. 6.

³² 105 U.S.C. 1171-1177 and 18 U.S.C. 1081-1083.

³³ *Cruises to Nowhere* The Florida Senate Interim Project 2004-138.

³⁴ *Id.*

³⁵ *Department of Revenue v. New Sea Escape Cruises, Ltd. v. Florida Department of Revenue*, Case No. SC 02-2013, *Dream Boat, Inc. v. Department of Revenue*, Case No. SC 03-0637, *Deerbrooke Investments, Inc. v. Department of Revenue.*, Case No SC 03-2266.

³⁶ *New Sea Escape Cruises, Ltd, v. Florida Department of*

Revenue, 823 So. 2d 161 (4th DCA 2002).

However, according to the Department of Revenue, if the cruise industry prevails in these cases, these tax assessments would be reduced to nearly \$0.³⁷

Indian Gaming

There are currently seven Florida Tribal casinos, including two recently opened Hard Rock casinos in Hollywood and Tampa, offering a variety of poker games and electronic bingo. Information regarding the revenues generated by these tribes is unavailable but revenue estimates have been released on a regional basis by the Indian Gaming Commission. Florida falls into Region VI which includes Alabama, Connecticut, Florida, Louisiana, Mississippi, North Carolina and New York. There are 24 Indian Gaming Operations in this region with gaming revenues at over \$4 billion for Fiscal Year 2003-04. These revenues are untaxed by the state.³⁸

Gaming in Mississippi

Since 1992, Mississippi has permitted casino gambling on "cruise vessels" docked in the Gulf of Mexico and on "vessels" docked in the Mississippi River or adjoining navigable waters within counties along the Mississippi River.³⁹ Of the patrons in the gulf coast gambling facilities the Mississippi Gaming Commission reports that 18.9 percent or 1,102,758 million patrons were from Florida.⁴⁰ The North and South River Regions had approximately 2.45 percent or approximately 110,000 of the patrons from Florida

Mississippi also has one Indian casino near Philadelphia, Mississippi (near the middle of the state).

Amendment 4

A constitutional amendment authorizing Dade and Broward counties to hold referenda to determine if slot machines should be allowed in existing, licensed pari-mutuel facilities passed by a narrow margin in the November 2004 General Election. Significant costs and

Revenue, 823 So. 2d 161 (4th DCA 2002).

³⁷ Communication with the Department of Revenue, November 17, 2004.

³⁸ Indian Gaming Commission website <http://www.nigc.gov/nigc/index.jsp> (last visited November 18, 2004).

³⁹ Miss. Code Ann. S. 97-33-7(4)(2004).

⁴⁰ *Quarterly Survey Information*, July 1, 2004-September 30, 2004, Mississippi Gaming commission. <http://www.mgc.state.ms.us/> (last visited November 18, 2004).

revenues may result for the state if the referenda are passed. The amendment permits the Legislature to tax the slot machine revenues and requires that those taxes supplement public education statewide.⁴¹

The Financial Impact Estimating Conference low and high estimates of tax revenue for these slot machines if both counties pass the referenda. The low estimate for tax collections for the first year of operation (2005-06) is \$87.9 million, \$247 million by year three and \$414.8 million by year six.. The high estimate is \$175 million the first year, \$606.1 million for year three, and 1.01 billion by year six.⁴²

The conference stated that there would be a reduction in sales tax collections of between \$11.9 million and \$45 million and a reduction in the sale of lottery tickets of between \$15 million and \$63.1 million due the shift in spending.⁴³

Extending the methodology used for the estimates for slot machines in Miami-Dade and Broward counties to encompass all 27 pari-mutuel facilities results in estimated third year slot machine tax revenues of between \$1.0 billion and \$2.3 billion. Offsetting these revenues would be losses of between \$115 million and \$170 million in sales tax revenues, and between \$145 million and \$215 million in Lottery proceeds, resulting in a net increase in all revenues of between \$700 million and \$2.0 billion. It is highly unlikely, however, that these revenue levels could be achieved due to differences in tourism levels and demographic characteristics between Miami-Dade and Broward counties and the rest of the state, and due to competition between the Miami-Dade and Broward facilities and those elsewhere in the state.⁴⁴

Conclusion

Legalized gaming in Florida faces challenges. Attendance and revenue have been on the decline in the pari-mutuel facilities in Florida since the late 1980s

⁴¹ Amendment 4, <http://election.dos.state.fl.us/initiatives/fulltext/30910-2.htm> (last visited November 21, 2004).

⁴² *Initiative Financial Information Statement, Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Pari-mutuel Facilities*, The Financial Impact Estimating Conference (2004).

⁴³ *Id.*

⁴⁴ Information received from the Office of Economic and Demographic Research, Florida Legislature.

and the Lottery continues to face challenges in meeting future revenue demands. Competition in the marketplace has contributed to these declines and challenges. The competition, which includes Indian tribal casinos, Cruises to Nowhere, gaming in Mississippi, and the Lottery (for the pari-mutuel industry), generate revenues that mostly goes untaxed and unregulated by the state.

It is also apparent that Floridians and tourists still enjoy gambling. The estimates for Cruises to Nowhere patrons were 4.5 million for 2002, estimates for Floridians gambling in Mississippi was over 1.1 million for Fiscal Year 2003-04, and revenue estimates for Indian Gaming show that Florida tribal casinos, along with casinos in Alabama, Connecticut, Louisiana, Mississippi, North Carolina and New York, are generating revenues of over \$4 billion for Fiscal Year 2003.

The pari-mutuel industry has made strides in maintaining a presence in Florida. The introduction of simulcast wagering and cardroom pot increases has attributed to increased revenues for the tracks and frontons. However, attendance and tax revenues have continued to decline. Part of the decline in tax revenues can be attributed to the tax breaks received from the Florida Legislature in 2000. This apparently has been of benefit to the thoroughbred and harness industries that have seen a 63 percent and 88 percent (respectively) increase in handle since Fiscal Year 1987-88. However, the dogtracks and jai alai frontons have experienced a 52 percent and a 78 percent (respectively) decrease in handle since Fiscal Year 1987-88. The decline in attendance and revenue been has also been attributed to competition in the marketplace.

Recommendations from OPPAGA to improve the revenues to the pari-mutuel industry, along with the industry's desire, have been to add video lottery terminals to the facilities. With the passage of Amendment 4, this is a pending issue in the Miami-Dade and Broward pari-mutuel facilities.

The Lottery's challenges include similar competition in the marketplace but also include its need to create new games or change on-line game prize payouts, explore other game options, increase the number of retailers as well as the quality of the retailers' lottery product and increasing its advertising. The Lottery also faces possible competition from the authorization of slot machines in Miami-Dade and Broward counties.

RECOMMENDATIONS

If the Legislature wants to address the apparent disparity in gambling opportunities between the legalized and taxed pari-mutuel industry and other non-taxed competition, it should allow video lottery terminals in all pari-mutuel facilities.

Considering the lack of revenue received from gaming revenues on Cruises to Nowhere, and in light of the pending cases in Florida's Supreme Court that could drastically reduce the tax revenues Florida currently receives, a possible source of revenue could be generated by a departure fee for patrons on cruise ships including Cruises to Nowhere.