

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government.—The bill requires the Division of Pari-mutuel Wagering to implement rules which establish the amount of the impact fee and the qualifications for disbursement of the revenue to qualifying neighboring municipalities.

Ensure lower taxes.—The bill imposes an annual fee in an amount up to \$1,000 for each slot machine approved for operation in the state.

B. EFFECT OF PROPOSED CHANGES:

Background

At the 2004 General Election, voters approved an amendment to the Florida Constitution that permitted two counties, Broward and Miami-Dade, to hold referenda on whether to permit slot machine gaming in certain pari-mutuel facilities within their respective counties. County-wide referenda were held in both counties on March 8, 2005. The referendum passed in Broward County but was defeated in Miami-Dade County.

During the 2005-A Special Session, the Legislature enacted Chapter 2005-362, Laws of Florida, which provided the regulatory framework for implementing Art. X, Sec. 23. This act was codified as chapter 551, Florida Statutes, and took effect January 4, 2006. The Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation is the regulatory agency charged with oversight of slot machine gaming. The implementing legislation limited the number of machines that may be operated at a pari-mutuel facility to no more than 1,500 per facility.

There are four existing pari-mutuel facilities in Broward County which were in operation during calendar years 2002 and 2003, and appear to qualify for slot machine gaming:

- Dania Jai Alai [the Aragon Group, Inc.] in Dania Beach;
- Gulfstream Park Racing Association, Inc. in Hallandale;
- Mardi Gras Racetrack and Gaming Center, [Hartman and Tyner, Inc.] in Hallandale; and
- Pompano Park Racing [PPI, Inc.] in Pompano Beach.

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 those four pari-mutuel facilities. 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.

Proposed Changes

This bill would impose an annual fee in an amount not to exceed \$1,000 upon each slot machine approved for use at an eligible pari-mutuel facility that is within one mile of a neighboring municipality. For purposes of this legislation, the term "neighboring municipality" means a municipality that does not have an eligible facility but is adjacent to an eligible facility and will have public safety, police, and fire

and rescue impacts that are demonstrated by significant increased aid calls to affected municipalities that are not currently funded.

The bill requires the fees to be submitted to the Division by February 1st of each year based on the number of slot machines approved for operation by the Division on January 1. Fees are to be deposited into the Pari-mutuel Wagering Trust Fund and are to be distributed to neighboring municipalities that have provided evidence to the Division of significant local impacts from slot machine operations during the prior year.

The Division is authorized to establish the amount of the fee and the criteria for determining a significant local impact by rule; however, those criteria must include increased crime incident reports, fire and rescue and emergency medical incident reports, and traffic flow and infrastructure impacts.

C. SECTION DIRECTORY:

Section 1. Creates a new s. 551.1062, F.S., to provide an annual fee on each slot machine approved for use at an eligible facility to be used by a neighboring municipality to offset adverse public health, safety, and welfare and public works and traffic impacts as a result of slot machine gaming at the eligible facility.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The provisions of this bill allow the collection of up to \$6,000,000 dollars annually for deposit into the Pari-mutuel Wagering Trust Fund for subsequent disbursement to qualifying neighboring municipalities. These are pass-through revenues and will not be retained in the Trust Fund; however, a service charge to General Revenue of \$438,000 will be assessed against the collection.

2. Expenditures:

The Division of Pari-mutuel Wagering will incur costs associated with rule-making and receipt and disbursement of revenue. The Division anticipates these costs to be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There is no statewide impact. At the present time there are four municipalities in Broward County that fall within the definition of a "neighboring municipality" under the criteria established in this bill. Those municipalities would be able to receive a pro rata share of revenue from the impact fee assessed each slot machine in Broward County upon a showing of significant local impact from slot machine gaming operations. Those four municipalities include: Aventura, Ft. Lauderdale, Hollywood, and Oakland Park.

2. Expenditures:

There is no statewide impact. The four qualifying "neighboring municipalities" will incur costs associated with compiling the various reports and evidence necessary to support a disbursement of revenue.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill requires each eligible pari-mutuel facility to pay an annual fee in an amount established by the Division, but not to exceed \$1,000, per slot machine approved for use at their facility. Each facility is

authorized to offer up to 1,500 slot machines; therefore, each facility could potentially be assessed an additional \$1.5 Million annually.

Residents and visitors to qualifying municipalities could benefit from increased funding of public safety, police, and fire and rescue efforts and mitigation of various public works and traffic impacts occurring as a direct result of slot machine gaming operations.

D. FISCAL COMMENTS:

None.

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:

Paragraph (b) of Article X, Section 23, Florida Constitution, reads as follows:

(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. [Emphasis supplied]

Impact fees are generally imposed to advance limited objectives within a community, such as reducing traffic or improving education. In this respect they differ from taxes which are imposed to meet the general needs of the government. Courts treat impact fees like regulations and do not subject them to the constitutional restrictions placed on taxes. However, if the fee charged lacks a sufficient connection with the government's objective, or if potential revenues would exceed the cost of needed improvements, courts may treat the impact fee as a tax. Courts require a nexus between the imposition of an impact fee, the impact which the fee seeks to offset, and the benefit derived.¹

B. RULE-MAKING AUTHORITY:

The bill requires the Division of Pari-mutuel Wagering to implement rules establishing the amount of the impact fee and the criteria by which disbursements may be made to qualifying municipalities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Division of Pari-mutuel Wagering contends the assessment of local impacts required by this legislation is beyond their scope of expertise and that these functions might more appropriately be placed in agencies that have either direct oversight or expertise in those areas.

V. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES