

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 187 Instant Bingo
SPONSOR(S): Dean
TIED BILLS: **IDEN./SIM. BILLS:** SB 272

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation</u>	<u>28 Y, 0 N</u>	<u>Gallen</u>	<u>Liepshutz</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, organizations that are engaged in charitable, civic, community, benevolent, religious, or scholastic works or other similar endeavors, which have been in existence and active for a period of three years or more, and qualified as tax exempt under the provisions of s. 501(c) of the Internal Revenue Code, may conduct bingo games. This bill authorizes these organizations to conduct "instant bingo" games. Usually referred to as *pull-tabs*, instant bingo is played by removing a cover from the ticket to reveal a set of numbers, letters, objects or patterns, some of which have been designated in advance as prize winners.

The bill requires that each deal of instant bingo tickets have a minimum prize payout of at least 65 percent. The bill exempts instant bingo from current bingo jackpot restrictions, e.g., instant bingo is not limited to three jackpots on any one day of play and is not limited to a maximum value on jackpots of \$250.

The bill provides that this act will be known as the Evelyn Wiesman-Price Act.

According to the Department of Lottery, the bill is not expected to have a significant impact on state revenue expenditures or collections.

The bill provides an effective date of July 1, 2004.

Article X, Section 15 of the State Constitution authorizes *state-operated* lotteries. Since instant-bingo tickets are similar to instant lottery tickets sold by the Department of Lottery, the bill may be subject to a constitutional challenge.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Article X, Section 7 of the State Constitution prohibits lotteries, other than the types of pari-mutuel pools authorized by general law on the effective date of the constitutional revision. A lottery is a game or an enterprise where for consideration the participants are given an opportunity to win a prize that is determined by chance, it contains the essential elements of *consideration*, *prize*, and *chance*. Consideration is anything of value in the eye of the law, such as a monetary price (e.g. \$1.00) in exchange for a game.

The Florida Supreme Court recognized bingo as an additional exception to the prohibition against lotteries when it considered the bingo law adopted in 1967 as a “contemporaneous construction” of the word “lottery” as used in the 1968 Constitution which was then under consideration¹.

A further amendment to the constitution was adopted in 1986, Article X, Section 15, which authorized *state operated* lotteries.

Bingo

Chapter 849, Florida Statutes, contains specific exceptions to the general gambling prohibition and authorizes certain gambling activities such as, cardrooms, bingo, and penny-ante poker. Specifically, s. 849.0931, F.S., authorizes the playing of charitable bingo.

Charitable, nonprofit, or veterans' organizations that are engaged in charitable, civic, community, benevolent, religious, or scholastic works or other similar endeavors, which have been in existence and active for a period of three years or more and qualified as tax exempt under the provisions of s. 501(c) of the Internal Revenue Code, may conduct bingo games, provided the entire proceeds derived from the conduct of the games, less actual business expenses, are donated to the listed endeavors.

If a statutorily authorized organization is not engaged in endeavors of the type listed, its right to conduct bingo games is conditioned upon the return of all the proceeds from the games to the players in the form of prizes.

¹ Greater Loretta Improvement Assoc. v. State, 234 So.2d 665 (Fla. 1970)

The statute also establishes restrictions on bingo jackpots. No jackpot may exceed the value of \$250 in actual money or its equivalent. There cannot be more than three jackpots on any one day of play and all other game prizes may not exceed \$50. An organization cannot conduct bingo more than two days per week.

Any organization or person who willfully and knowingly violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. For a second or subsequent offense, the organization or other person is guilty of a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

While this statute sets forth the basic rules and conditions for conducting bingo games, no statutory provision exists for statewide enforcement. Therefore, responsibility for the interpretation and enforcement of the bingo law rests with local law enforcement agencies. Several counties and/or municipalities have enacted their own bingo ordinances to address problems with bingo at the local level.

According to the October 2000 issue of *International Gaming and Wagering Business*, 37 states currently allow non-lottery operated pull-tabs or other charitable games and nine states authorize state-operated lottery pull-tabs.

The North American Gaming Regulators Association [NAGRA] has developed model standards of operation for pull-tab games to provide regulatory guidance to jurisdictions contemplating use of pull-tab lottery games. These standards of operation suggest licensure of all manufacturers, suppliers and vendors and methods of tracking and controlling inventory and controlling access and distribution.

Lottery

The Florida Lottery was established by the Legislature in 1987, codified as Chapter 24, F.S., in order to implement Article X, Section 15 of the State Constitution.² To ensure the integrity of lottery games and activities, Chapter 24 requires the Department of the Lottery to be held accountable to the Legislature and people of the state through a system of audits, reports, financial disclosure, open meetings and the public records law.

The Lottery contracts with over 11,000 retailers statewide to sell lottery products. Approximately 8,500 of these retailers sell both on-line and instant games, while the remainder sells only instant tickets. Lottery retailers are paid a five percent commission on each ticket sold and receive one percent of the value of all winning tickets redeemed at their business establishment.

Effect of Proposed Changes

The bill authorizes instant bingo games, defined as a game that is played using tickets by which a player wins a prize by opening and removing a cover from the ticket to reveal a set of numbers, letters, objects, or patterns, some of which have been designated in advance as prize winners. Such instant games are commonly referred to as "pull tabs" and are similar to instant lottery games.

The bill defines a deal of instant bingo tickets as a separate set of not more than 4,000 instant bingo tickets in which the predetermined minimum prize payout is at least 65 percent of the total receipts from the sale of the entire deal. Each ticket in a deal must bear the same serial number and there may not be more than one serial number in any deal.

² Article X, Section 15 of the State Constitution authorizes *state-operated* lotteries.

The bill requires that all instant bingo tickets manufactured, sold, or distributed in Florida must comply with the applicable mandatory standards adopted by the North American Gaming Regulators Association [NAGRA]. Except when in conflict with NAGRA standards, each ticket must:

- Be manufactured so that it is not possible to identify whether it is a winning or losing ticket until opened;
- Be manufactured using at least a two-ply paper so that the ticket is opaque;
- Have specified information printed on the ticket; and
- Have a form of winner protection that allows the organization to verify that a ticket is authentic.

In addition, each manufacturer and distributor that sells or distributes instant bingo tickets to organizations in Florida shall include specified information on the sales invoice and the invoice must remain on the premises from which the tickets are sold. All such information must be retained by the distributor or manufacturer for at least three years.

The bill requires that the Department of the Lottery maintain a list of no fewer than six qualified instant bingo ticket vendors that are authorized to sell tickets in Florida. The Department of Lottery must process all applications to be placed on the list of instant bingo ticket manufacturers. No instant bingo ticket may be sold in Florida unless purchased from a vendor on the list of approved manufacturers.

The bill provides that instant bingo tickets may be sold by any organization that can currently conduct traditional bingo games. The tickets must be sold at the price printed on the ticket, which may not exceed \$1. Discounts cannot be given for purchases of multiple tickets, and tickets cannot be given away free of charge. The sets of numbers, letters, objects, or patterns that have been pre-designated as winning combinations for a deal of bingo tickets must be posted before the sale of any tickets from that package.

The bill exempts instant bingo from current bingo jackpot restrictions, such that instant bingo is not limited to three jackpots on any one day of play and is not limited to a maximum value on jackpots of \$250.

To incorporate this act into other Florida Statutes that apply to the playing of bingo, the bill reenacts Florida Statutes relating to homeowners associations and condominium associations.

The bill takes effect July 1, 2004.

C. SECTION DIRECTORY:

Section 1. Provides the act will be known as the "Evelyn Wiesman-Price Act."

Section 2. Amends 849.0931, F.S., to authorize the play of "instant bingo."

Section 3. Provides reenactment of 718.114, F.S., relating to condominium associations.

Section 4. Provides reenactment of 723.079(8), F.S., relating to homeowners associations.

Section 5. Provides the bill will take effect July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The bill requires the Department of Lottery to maintain a list of qualified instant bingo ticket manufacturers and requires the department to process all applications for instant ticket manufacturers. It has not been determined at this time whether additional full time employees will be needed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The addition of pull tab bingo tickets is expected to generate additional revenue for the various organizations conducting bingo and, as a consequence, is expected to generate additional revenue for the various charities supported by these organizations.

D. FISCAL COMMENTS:

The Department of Lottery is authorized to payout "variable percentages" of gross revenue from the sale of instant lottery tickets³. This variable transfer rate is intended to maximize ticket sales while maximizing deposits into the Educational Enhancement Trust Fund (EETF). The average prize payout for FY 2002-2003 was approximately 67%, and a payout of 67-69% is expected in 2004.

Instant bingo tickets, as authorized in this legislation, with at least a 65% payout may compete with instant tickets offered by the Florida Lottery; however, the effects on the EETF are expected to be marginal.

The Department of the Lottery does not anticipate any significant cannibalization since instant bingo tickets will be marketed in venues different from those in which Florida Lottery tickets are traditionally sold.

The Florida Lottery has expressed the concern that if instant bingo ticket games experience any security or integrity failures, the public's confidence in Florida Lottery games may be jeopardized even though the instant bingo tickets are not marketed by the Florida Lottery. A loss of confidence in Florida Lottery games could have a substantial negative impact on Lottery ticket sales and consequent transfers to the EETF.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

³ s. 24.121, F.S.

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable because the bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

2. Other:

Article X, Section 7 of the State Constitution prohibits lotteries, other than the types of pari-mutuel pools authorized by general law on the effective date of the constitutional revision. The Florida Supreme Court held bingo as an exception to the prohibition, stating that the bingo law was a “contemporaneous construction” of the word “lottery.” A further amendment to the constitution was adopted in 1986, Article X, Section 15, which authorized *state operated* lotteries.

Chapter 849, Florida Statutes, provides the codification of these prohibitions and contains specific exceptions which authorize gambling activities such as cardrooms, bingo, and penny-ante poker.

This bill proposes to allow the sale of instant bingo tickets which appear to be similar to instant lottery tickets sold by the state lottery and, therefore, may be subject to a constitutional challenge.

It is important to note that several state courts have reached different conclusions on whether the adoption of instant bingo is constitutional.

In California, the legislature statutorily expanded the definition of the term “bingo” to include “punchboard cards” (i.e. instant bingo). The constitutionality of this act was challenged because the term bingo had already been defined more narrowly by enabling legislation that was passed prior to and contingent on the adoption of the constitutional provision allowing charitable bingo. In People v. 8,000 Punchboard Card Devices, the issue before the court was whether the amended definition was in violation of the constitutional amendments intent⁴. The court held the act was constitutional. The court explained that because the state constitution is a limit on legislative power that statutory construction of a word is to be given substantial deference⁵. More importantly, the court concluded that there was no common meaning of the word bingo and held that “punchboard bingo” was not “unreasonable or clearly inconsistent” with the constitutional provision⁶.

In contrast to the California First District Court of Appeals holding, two later state supreme court cases in Kansas and Alabama have found laws unconstitutional that sought to expand the definition of bingo to include “instant bingo.” Like the California Legislature, the Kansas Legislature had adopted a statutory provision to expand the definition of bingo to include “instant bingo.” The Kansas Supreme Court held the act to be unconstitutional, stating that although the state constitution grants the legislature broad powers to define bingo, in doing so, definitions adopted must bear reasonable and recognizable similarity to traditional bingo and other bingo-type games. Kansas v. Parrish, 256 Kan. 746 (Kan. 1994). see also Piedmont v. Evans, 642 So.2d 435 (Ala. 1994) (Where the Alabama Supreme Court held that “instant bingo” was an illegal lottery and the city ordinance adopting it was unconstitutional)

Like Florida, the California, Kansas, and Alabama state constitutions had expressly prohibited lotteries or non-state lotteries, and each state had adopted constitutional or statutory provisions allowing charitable bingo.

The Department of Lottery has expressed the opinion that the bill raises significant constitutional issues in light of the constitutional prohibition against lotteries and the provision authorizing only state operated lotteries.

⁴ People v. 8,000 Punchboard Card Devices, Boy’s Club of Hayward, 142 Cal.App.3d 618 (Cal. 1st DCA 1983).

⁵ 142 Cal.App3d 618, 620

⁶ 142 Cal.App3d 618, 622

Prior to the 2002 Legislative Session, Attorney General Bob Butterworth and Governor Jeb Bush in a joint letter to then Speaker Feeney, expressed that expanding the definition of bingo to include instant bingo “runs afoul of the constitutional prohibition of lotteries and can only be permitted by amending the Constitution.”⁷ Whether the Governor’s opinion remains the same, or the current Attorney General holds the same opinion as his predecessor, is undetermined.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Lottery states that it was established to operate not as a regulatory or licensing agency, but as an entrepreneurial business enterprise. Trying to combine the entrepreneurial purpose for which the department was created with regulatory and licensing responsibilities would detract from the department’s mandate to maximize revenues for education.

On January 21, 2004, the Committee on Business Regulation discussed the bill prior to voting on the bill.

Current law provides that no one organization may conduct bingo on more than two days per week. Since the bill makes specific exceptions for certain provisions regarding instant bingo, such as for jackpot restrictions, the existing provision that limits an organization to conduct bingo no more than two days per week appears applicable to instant bingo. Discussion of this provision by committee members, including the bill sponsor, as to the intent of the bill indicate that the provision limiting an organization to conduct bingo no more than two days per week applies to instant bingo.

Additionally, the bill appears to limit the sale of instant bingo to locations that conduct traditional bingo. The bill sponsor during committee discussion of the bill indicated that the sale of instant bingo tickets is limited to places where traditional bingo is being conducted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

⁷ Letter to Speaker Feeney regarding HB 23, February 5, 2002.