

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 867 CS Impact Of Slot Machine Gaming  
**SPONSOR(S):** Gottlieb  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>14 Y, 3 N, w/CS</u>	<u>Morris</u>	<u>Liepshutz</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Finance &amp; Tax Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

At the 2004 General Election, voters approved an amendment to the Florida Constitution, Art. X, Sec. 23, which 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. During the 2005-A Special Session, the Legislature enacted Chapter 2005-362, Laws of Florida, which provided the regulatory framework for implementing this constitutional amendment. Among its provisions the implementing legislation limited the number of machines that may be operated at a qualifying pari-mutuel facility to no more than 1,500 per facility.

This bill would impose an annual impact fee of up to \$1,000 per slot machine approved for operation at each pari-mutuel facility. The fee would be remitted to and disbursed by the Division of Pari-mutuel Wagering to neighboring municipalities to mitigate the impact of slot machine gaming on that municipality. The bill provides for informal mediation to resolve impact disputes between a slot machine facility and a municipality.

The collection of this impact fee could result in the collection of up to \$6,000,000 dollars annually for deposit into the Pari-mutuel Wagering Trust Fund. These are pass-through revenues and will not be retained in the Pari-mutuel Wagering Trust Fund; however, a service charge to General Revenue of \$438,000 would be assessed against the collection. The bill is expected to have an insignificant impact on state revenue expenditures.

The bill provides an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

Provide limited government – The bill requires the Division of Pari-mutuel Wagering to implement rules establishing the amount of the fee and to administer the provisions created in s. 551.1062, F.S.

#### 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 in Dania Beach;
- Gulfstream Park Racing Association, Inc. in Hallandale;
- Mardi Gras Racetrack and Gaming Center [formerly Hollywood Greyhound], in Hallandale; and
- Pompano Park Racing 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 anticipated impacts and required expenditures.

##### Proposed Changes

This bill imposes an annual impact fee in an amount not to exceed \$1,000 upon each slot machine approved for use at a slot machine facility. The fee will be remitted to and disbursed by the Division of Pari-mutuel Wagering to neighboring municipalities of the facility to mitigate the impact of slot machine gaming on that municipality. A "neighboring municipality" is a municipality that does not have a slot

machine facility but is within one mile of any boundary of a slot machine facility or is within 2½ miles of any boundary of any two facilities and has public works and traffic impacts, public safety, police, and fire and rescue impacts that are demonstrated by increased aid calls.

The bill requires the impact fees to be submitted to the Division by February 1<sup>st</sup> of each year based on the number of slot machines approved for operation at that facility by the Division on January 1. Fees are deposited into the Pari-mutuel Wagering Trust Fund and are required to be accounted for separately from other revenue in the trust fund. In addition, impact fees are protected from the year-end sweep of revenue in the trust fund in excess of \$1.5 million.<sup>1</sup>

The bill requires the impact fees to be distributed to municipalities that have provided evidence to the Division of significant local impacts from slot machine gaming operations during the prior year. A slot machine facility is only responsible for impacts occurring within their neighboring municipality or municipalities. The bill authorizes the Division to contract with a public or private entity to mediate local impact disputes between a slot machine facility and a municipality and establishes timelines and procedures for informal mediation. The bill specifies that mediation does not preclude either party from seeking redress in a court of jurisdiction. At the end of each fiscal year any revenue remaining in the trust fund from deposits made three years previous must be returned to the facility making the deposit.

It appears that there are five municipalities in Broward County that fall within the definition of a "neighboring municipality" under the criteria established in this bill and two municipalities in Miami-Dade County.<sup>2</sup>

#### C. SECTION DIRECTORY:

Section 1 creates a new s. 551.1062, F.S., to assess an annual impact fee on each slot machine approved for use at an eligible facility to be used by a neighboring municipality to mitigate adverse impacts; provides definitions; provides for mediation of disputes; provides for segregation of revenue; provides for rebates; requires rulemaking.

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.

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<sup>1</sup> See s. 550.135(2), F.S.

<sup>2</sup> Ft. Lauderdale, Oakland Park, Hollywood, Pembroke Park and West Park in Broward County and Aventura and Golden Beach in Miami Dade County.

2. Expenditures:

There is no statewide impact. The 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.<sup>3</sup>

B. RULE-MAKING AUTHORITY:

The bill requires the Division of Pari-mutuel Wagering to implement rules establishing the amount of the impact fee and to administer the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Division 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**

The Committee on Business Regulation adopted several amendments to this bill on March 16<sup>th</sup> and voted, 14 Yeas to 3 Nays, to report the bill favorably with CS. The amendments:

- create a procedure for mediation of disputes of local impacts;
- segregate the impact fee revenue when deposited into the Pari-mutuel Wagering Trust Fund from other revenue in the fund;
- protect impact fee revenue from the end-year sweep of the trust fund;
- clarify that the one-mile boundary should be measured from any boundary of the facility;
- amend the definition of "neighboring municipality" to include any municipality that is located within 2½ miles of any two slot facilities;
- require the return to the slots facility of unexpended funds if a claim for impacts has not been approved by the Division after three years; and
- make technical and clarifying changes.

[This bill analysis has been updated to reflect these changes.]