

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The provisions of the bill do not appear to implicate the House principles.

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 and contains the essential elements of consideration and prize. Consideration is anything of value in the eye of the law, such as a monetary price 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.

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.

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.

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

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.

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.

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.

The bill defines the term “flare” as the board or placard that accompanies each deal of instant bingo tickets and that has printed on or affixed to it the following information:

1. The game name.
2. The manufacturer's name or distinctive logo.
3. The form number.
4. The ticket count.
5. The prize structure, including the number of symbols or number combinations for winning instant bingo tickets by denomination, with their respective winning symbols or number combinations.
6. The cost per play.
7. The game serial number.

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 the Lottery must

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

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 or 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.

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, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

No revenues are expected unless DOL will be able to impose fees for processing vendor applications and impose penalties for vendors who do not comply with the provisions of the bill. It is currently unknown if lottery revenues will be affected by this legislation.

2. Expenditures:

According to the department, 3 additional FTE will be needed to handle the application processing and auditing workload associated with this legislation. The DOL is requesting a Manager, an Analyst and an Administrative Assistant. The department will conduct initial audits of vendors applying to offer instant bingo tickets and will conduct annual audits thereafter.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments may incur some costs for enforcement and/or regulation of instant bingo.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

The bill does not clearly identify whether the DOL is ultimately responsible for the payout percentages and compliance of vendors. The department assumes it will be required to audit and regulate the vendors on the approved vendor list maintained by the department. The costs to the department could be reduced if it is determined that local governments who currently regulate bingo are also responsible for regulating instant bingo.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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, F.S., 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. 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 amendment’s intent.³ The court held the act was constitutional. The court explained that because the state constitution is a limit on legislative power, statutory construction of a word is to be given substantial deference.⁴ 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 provision.⁵

In contrast to the California First District Court of Appeal’s 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

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

⁴ 142 Cal.App.3d 618, 620

⁵ 142 Cal.App.3d 618, 622

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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the 2004 legislative session, HB 187 was passed by the Legislature. The legislation contained nearly identical provisions to the current HB 191. The 2004 legislation was vetoed by Governor Bush with the stated objections being:

“expanding bingo to include sales of what amounts to a lottery ticket is, at worst, arguably unconstitutional and, at best, simply bad public policy.”

“ while there are many practical problems with this legislation, my overriding opposition is that the bill clearly expands gambling in the State of Florida.”

D. STATEMENT OF THE SPONSOR

DEPARTMENT OF THE LOTTERY – STAFFING

I take strong issue with the Department of the Lottery’s claim for the need of three additional positions of a manager, an analyst, and an administrative assistant in order to keep a list of at least five qualified instant bingo ticket manufacturers. HB 191’s requirements to keep a list of at least five instant bingo manufacturers requires no additional positions to be funded for the Department of the Lottery. The bill enumerates the major compliance standards of the North American Gaming Regulators Association (NAGRA) and incorporates all of their additional standards by reference in order to qualify to be placed on the manufacturers list to be maintained by the Florida Lottery. There are currently five manufacturers which are members of National Association of Fundraising Ticket Manufacturers (NAFTM). In order to be a member of NAFTM the manufacturer must subscribe to all NAGRA standards. Unless the Lottery chose to expand the list of manufacturers beyond five members the Lottery would have little more to do than verify the manufacturer’s membership in NAFTM which could in reality be done by a phone call.

FISCAL IMPACT

(1) REVENUES: The staff analysis said that it is unknown if the lottery revenues will be affected by this legislation.

In previous years the Florida Lottery has conducted bill analysis on almost identical legislation that has been considered. The Florida Lottery’s own fiscal impact analysis provided: “Although it is reasonable to expect some cannibalization, any impacts on Florida Lottery revenue resulting from the sale of instant bingo tickets are expected to be de minimis. This is because, as in Iowa and Missouri, instant bingo tickets would be marketed in venues different from those in which Florida Lottery tickets are sold.”

CONSTITUTIONAL DISCUSSION

The Florida Constitution does not provide that the charitable instant bingo ticket is a product exclusive only to the Florida Lottery. Of course, all bingo games are lotteries. But the Florida Legislature and the Florida Supreme Court have always held that, pari-mutuels and a peculiar form of lottery which involves objects, numbers, letters, and patterns, which is also known as bingo, was outside of the constitutional prohibition against lotteries. The bill defines instant bingo using the very same definition of bingo; that is objects, numbers, letters, and patterns, and requires a pari-mutuel prize pool. Our Constitution

provides for pari-mutuels, bingos and lotteries, and provides that the Florida Legislature may provide for the regulation or operation of each.

Many states that have Constitutional provisions similar to Florida, such as Texas, Ohio and Missouri recognize the instant bingo ticket as a bingo product. Indeed, our own federal government, under the Indian Gaming Regulatory Act, recognizes the charitable pull-tab (instant bingo ticket), as long as it is played in the same location as bingo, as a Class II game. Class II games are bingo games that require little or no regulation. All lottery games, including the scratch lottery ticket, are considered by the same act as Class III games. Class III games are casino games, lotteries, and video and slot machines which require strict federal regulations and oversight.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES