

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RAC 16-03 Voter Control of Gambling Expansion in Florida

SPONSOR(S): Regulatory Affairs Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Affairs Committee		Anderson	Hamon

SUMMARY ANALYSIS

This joint resolution proposes to create article X, section 29 of the Florida Constitution, relating to voter control of gambling expansion. The joint resolution requires a constitutional amendment proposed by initiative petition to expand gambling in any fashion in the state.

Expansion of gambling is defined to include the introduction of any additional types of games or the introduction of gambling at any facility not conducting gambling as of January 1, 2016, or expressly authorized by statute during the current legislative session. Gambling is defined consistent with federal law, with certain exceptions.

The resolution does not alter the Legislature's ability to restrict, regulate, or tax gambling activity in Florida.

The resolution does not limit the State of Florida's ability to negotiate a state-tribal compact under the federal Indian Gaming Regulation Act or to enforce any current compact.

The joint resolution requires publication prior to the election. The required publication of the amendment would have an effect on expenditures. The Division of Elections within the Department of State estimated the full publication costs for advertising the proposed constitutional amendment to be approximately \$157,589.23.

For the proposed constitutional amendment to be placed on the ballot, the Legislature must approve the joint resolution by a three-fifths vote of the membership of each house of the Legislature.

If the joint resolution is passed by a three-fifths vote of both houses of the Legislature, it will be submitted to the voters in the general election in November of 2016.

The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment. If approved by the voters, the proposed constitutional amendment would be effective January 3, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Article X, section 7 of the Florida Constitution prohibits lotteries, other than pari-mutuel pools authorized by law on the effective date of the Florida Constitution, from being conducted in Florida by private citizens.

The Florida Supreme Court has found that "The Constitution of Florida is a limitation of power, and, while the Legislature cannot legalize any gambling device that would in effect amount to a lottery, it has inherent power to regulate or to prohibit any and all other forms of gambling; such distinction being well defined in the law."¹ The Court went on to limit the applicability of the constitutional provision to such legalized lotteries, "the primary test of which was whether or not the vice of it infected the whole community or country, rather than individual units of it. Any gambling device reaching such proportions would amount to a violation of the Constitution."² Thus, the Legislature may regulate keno,³ bingo,⁴ and slot machines.⁵

Pari-mutuel wagering on horseracing and greyhound racing was authorized by statute in 1931 and on jai alai in 1935.⁶ Such activities are regulated by ch. 550, F.S., and overseen by the Division of Pari-mutuel Wagering (DMPW) within the Department of Business and Professional Regulation.

Article X, section 15 of the Florida Constitution authorizes the state to operate lotteries. The Legislature has implemented this provision through ch. 24, F.S., which establishes the Florida Lottery.

Article X, section 23 of the Florida Constitution authorizes slot machines at seven pari-mutuel facilities in Miami-Dade and Broward Counties that conducted pari-mutuel wagering on live events in 2002 and 2003, subject to local approval by countywide referendum. The Legislature has implemented this provision through ch. 551, F.S. The DPMW oversees such activities.

In 2010, the Legislature authorized slot machines at pari-mutuel wagering facilities in counties that meet the definition of s. 125.011, F.S., (currently Miami-Dade County), provided that such facilities have conducted pari-mutuel wagering on live racing for two years and meet other criteria.⁷ Hialeah Park is the only facility that operates slot machines under this provision.

The Legislature also provided that pari-mutuel wagering facilities in other counties could gain eligibility to conduct slot machines if located a county that has approved slot machines by a referendum which was held pursuant to a statutory or legislative grant of authority granted after July 1, 2010, provided that such facility had conducted live racing for two calendar years preceding its application and complies with other requirements for slot machine licensure.⁸

¹ *Lee v. City of Miami*, 121 Fla. 93, 102 (1935).

² *Id.*

³ *Overby v. State*, 18 Fla. 178, 183 (1881).

⁴ *Greater Loretta Imp. Ass'n v. State ex rel. Boone*, 234 So.2d 665 (Fla. 1970).

⁵ *See Lee v City of Miami*, 121 Fla. 93 (1935), and *Florida Gaming Centers v. Florida Dept. of Business and Professional Regulation*, 71 So.3d 226 (Fla. 1st DCA 2011).

⁶ *Deregulation of Intertrack and Simulcast Wagering at Florida's Pari-Mutuel Facilities*, Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.

⁷ *See* Ch. 2010-29, Laws of Fla., and s. 551.102(4), F.S.

⁸ *See* 2012-01 Fla. Op. Att'y Gen. (interpreting the slot machine eligibility provision as requiring additional statutory or constitutional authorization "to bring a referendum within the framework set out in the third clause of s. 551.102(4)").

Gambling on Indian lands is regulated by federal law, which requires the state negotiate in good faith for compacts governing the operation of certain types of games, if authorized for any person in the state.⁹ Florida has negotiated such a compact with the Seminole Tribe of Florida.

Proposed Changes

The joint resolution proposes creation of article X, section 29 of the Florida Constitution relating to voter control of gambling expansion. The joint resolution amends the Florida Constitution to require a constitutional amendment proposed by initiative petition to expand gambling in the state.

Expansion of gambling is defined in the joint resolution as the introduction of gambling at any facility or location in the state other than those facilities lawfully conducting gambling as of January 1, 2016, or expressly authorized by statute enacted during the 2016 regular session of the Legislature. The term includes the introduction of additional types or categories of gambling at any such location.

The joint resolution does not limit the Legislature's authority to restrict, regulate, or tax any gambling activity by general law.

With certain exceptions, gambling is defined consistent with federal law governing gambling on Indian lands.¹⁰ The resolution cites the federal definition of class III gaming. Such games include:

- House banked or banking games such as baccarat, chemin de fer, blackjack (21), and pai gow;
- Casino games such as roulette, craps, and keno;
- Slot machines as defined in 15 U.S.C. s. 1171(a)(1);
- Electronic or electromechanical facsimiles of any game of chance;
- Sports betting and pari-mutuel wagering, including, but not limited to, wagering on horse racing, dog racing, or jai alai; and
- Lotteries, other than state-operated lotteries.

The resolution specifically includes the following in the definition of gambling, regardless of how those devices are defined under the federal law:

- Electronic gambling device,
- Internet sweepstakes device, and
- Video lottery terminal, other than a state-operated video lottery terminal.

The joint resolution does not limit the authority of the state to negotiate a tribal-state compact under the federal Indian Gaming Regulation Act or to enforce any existing tribal-state compact.

If the joint resolution is passed by a three-fifths vote of both houses of the Legislature, it will be submitted to the voters in the general election in November of 2016.

B. SECTION DIRECTORY:

This is a joint resolution, which is not divided by sections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not appear to have an impact on state government revenues.

2. Expenditures:

⁹ See Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq.

¹⁰ Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq.

Article XI, section 5(d) of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated the average cost per word to advertise a proposed amendment to the Florida Constitution to be approximately \$135.97 per word. The estimated total publishing cost for advertising the joint resolution would be approximately \$157,589.23.¹¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have an impact on local government revenues.

2. Expenditures:

The joint resolution does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This joint resolution does not appear to have an economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This is not a general bill and is therefore not subject to the municipality/county mandates provision of article VII, section 18 of the Florida Constitution.

2. Other:

The Legislature may propose amendments to the Florida Constitution by joint resolution approved by three-fifths of the membership of each house.¹² The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by the a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.¹³

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose. Without an effective date, the amendment becomes effective on the first Tuesday after the first Monday in the January following the election, which will be January 3, 2017.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

¹¹ Department of State, Agency Analysis 2015 Bill HJR 1239 (Mar. 12, 2015).

¹² FLA. CONST. art. XI, s. 1.

¹³ FLA. CONST. art. XI, s. 5.

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES