

Legalized Gambling in Florida - the Competition in the Marketplace

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Background

Horsereading and dogracing were legalized by the Legislature in Florida in 1931, overriding a veto of the legislation by Governor Carlton.¹ The impetus to legalize gambling in Florida has been attributed to the Great Depression of the 1930's and the land boom of 1924-25.² The pari-mutuel industry has proven to be a substantial source of entertainment and revenue to the state over the past 70-plus years. The pari-mutuel industry has grown from six dog tracks and three horse tracks in 1931 to 18 dogtracks, seven jai alai frontons, five thoroughbred and one harness track in 2004. However, attendance and revenues have steadily declined since the late 1980s. The decline has been attributed to increased competition from the state lottery, seven tribal casinos, including two Hard Rock casinos in Hollywood and Tampa, gambling cruise ships, and gaming in Mississippi.³

The Florida State Lottery began in 1987 as a way to generate significant additional funds for education. The Lottery revenues have continued to increase over the years. Legislation allowing them to increase payouts for scratch-off games and a change in their on-line vendor has had a positive impact on the amount of revenues generated.⁴ The latest estimates for Fiscal Year 2004-05 have projected revenues totaling \$1.03 billion and \$1.07 billion for Fiscal Year 2005-06.⁵

However, the Lottery also faces similar challenges as the pari-mutuel industry which have been attributed to competition from the tribal casinos, Cruises to Nowhere, and Amendment 4, adopted by the voters at the General Election in 2004.⁶

Cruises to Nowhere began in Florida in 1984 with the operation of one ship. The industry has now grown to 17 ships operating out of every major port on the Florida peninsula, excluding the Panhandle. Though the gambling revenues are not taxed by the state, taxes are collected on alcoholic beverages and by the drink

¹ *A Review of the Method of Granting Additional Pari-Mutuel Operation Days*, Florida Senate Committee on Commerce, March 1987 and Chapter 14832, L.O.F. (1931).

² Allen Morris, com., *Florida Handbook 1947-48*, (Tallahassee, Florida: The Peninsular Publishing Co.) p. 67.

³ *Justification Review Additional Steps Could be Taken to Aid Pari-Mutuel Industry and/or Cut Regulatory Costs*, Report, No. 03-56, Office of Program Policy Analysis and Government Accountability, Florida Legislature, October 2003. Also see Pari-mutuel survey at Appendix III and *Infra* at n.130.

⁴ *Florida Lottery Makes Progress by Implementing Many Justification Review Recommendations*, Report No. 03-56, Office of Program Policy Analysis and Government Accountability, Florida Legislature, January 2004.

⁵ *Consensus Estimating Conference on Lottery Revenues*, October 2004

⁶ *Lottery Faces Challenges Meeting Future Revenue Demands, Continues Work to Improve Efficiency*, Draft Report No. 04-xx, Office of Program Policy Analysis and Government Accountability, Florida Legislature.

tax. In addition, sales and use taxes are paid for purchases of tangible personal property, purchases of diesel fuel, and on admission charges. In 2002, the industry reportedly contributed in excess of \$17.4 million in federal, state and local taxes with state taxes and fees totaling \$5.4 million and local taxes and fees totaling \$1.1 million. The industry has also contributed to Florida's economy by employing over 2,800 full-time and over 250 part-time employees.⁷

Indian gaming began in Florida in 1979 with bingo halls.⁸ In 1981, a federal court ruled that the statute permitting bingo games could not be enforced against the Seminole Indian Tribe and therefore Indians as well as non-Indians could play bingo at the tribal facility.⁹

In 1987, the U.S. Supreme Court confirmed the authority of tribal governments to establish gaming operations independent of state regulation, provided that the state in question permits some form of gaming.¹⁰ Congress took up the issue of tribal gaming ultimately culminating in the passage of the Indian Gaming Regulatory Act of 1988 (IGRA). The act allows tribes to participate in gaming activities on tribal land if a tribe meets the requirements of the act. The act divides gaming into three classes. Class I gaming is traditional, ceremonial tribal games. Class II gaming is bingo, keno, and games similar to bingo and keno, and Class III gaming is all other gambling such as casino gambling, pari-mutuel wagering, video games, and the lottery.¹¹

There are currently seven Florida tribal casinos offering bingo (including electronic bingo) and card games. Revenues generated by these tribes are unavailable but revenue estimates have been released on a regional basis by the Indian Gaming Commission. Florida falls into Region VI which includes Alabama, Connecticut, Florida, Louisiana, Mississippi, North Carolina, and New York. There are 24 Indian Gaming Operations in this region with gaming revenues at over \$4 billion for Fiscal Year 2003. These revenues are untaxed by the state.

The passage of Amendment 4 to Florida's State Constitution by the voters in the 2004 General Election may provide an additional revenue source to the state's educational fund. The amendment authorizes Dade and Broward counties to hold referenda to determine whether slot machines should be allowed in existing, licensed pari-mutuel facilities. The Financial Impact Estimating Conference provided low and high estimates of tax revenue for these slot machines if both counties pass the referenda. The low estimate for tax collections for the first year of operation (2005-06) is \$87.9 million, \$247 million by year three and \$414.8

⁷ *Cruises to Nowhere*, The Florida Senate Interim Project Report 2004-138, November 2003.

⁸ *Seminole Tribe of Florida v. Butterworth*, 491 F. Supp. 1015 (S.D. Fla.1980).

⁹ *Seminole Tribe of Florida v. Butterworth*, 658 F. 2d 310 (5th Cir. 1981).

¹⁰ *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

¹¹ 25 U.S.C. ss. 2701-2702 (2004).

million by year six.. The high estimate is \$175 million the first year, \$606.1 million for year three, and 1.01 billion by year six¹²

The slot machines are considered Class III gaming under IGRA and open up the possibility for the tribes to negotiate a compact allowing slots in the tribal casinos. Compacts from other states can be used as an example of how the states could generate revenues if the states allow some sort of exclusivity to the tribes.

It appears that only pari-mutuel facilities in Dade and Broward County would reap any benefit from these machines. According to a survey of the pari-mutuel industry survey in 2004, suggestions to improve attendance and revenue include having these slots at all the pari-mutuel facilities. Other suggestions have been to exclude the smoking ban and limit regulation on the facilities to allow them to compete with each other and the outside gaming influences.

¹² *Initiative Financial Information Statement, Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Pari-mutuel Facilities*, The Financial Impact Estimating Conference (2004).

Methodology

Committee staff reviewed state and federal statutes, legislative history, and case law on the gaming industry. Staff met with staff of the state agencies responsible for overseeing the various gaming provisions in the statutes. Staff contacted representatives from the Department of Interior and the Indian Gaming Commission to ascertain the status of Indian gaming in Florida. Representatives for the gaming industry in Mississippi were contacted to obtain statistics on the gaming industry in that state. Staff also reviewed reports on gaming in Florida and other national organizations.

The Findings

I. Legalized Gambling in Florida

A. The Pari-Mutuel Industry

1. History of Pari-Mutuels in Florida

The 1930s

Legalized gaming came to Florida in 1931. Though the law was initially vetoed by then Governor Doyle E. Carlton, it was overridden by the legislature and ordered certified to the Secretary of State on June 5, 1931. The law legalized horseracing and dogracing and created a five member State Racing Commission.¹³

The impetus to finally legalize gambling in Florida has been attributed to the Great Depression of the 1930's and the Florida land boom of 1924-25. A revenue source was needed to finance public and social services and the revenues from gambling could provide that assistance. The law provided for a three percent tax on pari-mutuel betting and a 15 percent tax on admissions to the facilities, which were earmarked for equal distribution to each of Florida's 67 counties.¹⁴

The State Racing Commission's (commission) duties included supervising, checking, and licensing pari-mutuel betting activities. Its primary duties included checking the making and distribution of pari-mutuel pools and establishing racing dates. The commission was also required to submit an annual report to the Governor consisting of financial data and other pertinent information relating to the pari-mutuel industry.¹⁵

The number of racing days for horseracing and dogracing, was 50 days and 90 days respectively. The racing dates were to be apportioned in a fair and impartial manner among the six dog tracks and three horse tracks. However, if there was only one licensed dog track or jai alai fronton in a county, the facility could operate 90 days during the racing season at the option of the track.

In 1935, jai alai was added to the list of legalized pari-mutuel activities.¹⁶ Slot machines were also legalized in 1935. However, the Comptroller rather than the commission was given authority to administer and enforce the law related to the

¹³ *Supra* at n. 1.

¹⁴ *Supra* at n. 2.

¹⁵ *Supra* at n. 1.

¹⁶ Chapter 17074 (1935).

slot machines.¹⁷ A reported 12,000 slot machines went into operation and gave the state approximately \$625,000 in revenue.¹⁸ The law was repealed in 1937 after referendums in most counties had shown large majorities against their operation.¹⁹

In the same year, litigation had begun that challenged the commission's authority to fix and set permissible dates for dog racing. At that time, there were three greyhound tracks located in Dade County, Florida. The commission allotted the West Flagler Amusement Company, Inc., a lesser number of permissible racing days than the tracks operated by Biscayne Kennel Club, Inc., and Miami Beach Kennel Club, Inc. The Florida Supreme Court held that ch. 17276, L.O.F. (1935), disclosed a clear intent that every licensed dog track be entitled to a full period of 90 days of racing.²⁰ The court also stated that this law did not prevent the commission from fixing and setting the 'dates' within the total number of racing 'days' so long as each track is afforded a fair and impartial opportunity for the beneficial enjoyment of the privilege of racing that is implied by the racing permits or licenses.²¹

By the end of 1939 total state revenues amounted to \$1,968,649.30 and attendance at the 10 dog tracks, four horsetracks and one jai alai frontons was 2,517,436.²²

The 1940s

In 1945, distance restrictions were imposed on jai alai frontons for the first time. The law provided that no jai alai fronton could operate within 20 miles of an already licensed fronton and the days of operation could not be limited to less than 90 days annually.²³ Dog tracks and jai alai fronton had an additional two percent tax imposed and a tax equal to 50 percent of the breaks.²⁴ These taxes were earmarked for the Old Age Assistance Fund.²⁵

¹⁷ Chapter 17257 (1935).

¹⁸ Florida Research Bureau, *Florida and It's Money*, (St. Augustine, Fla.: The Record Co., 1938) p. 164.

¹⁹ *Id.*

²⁰ *State ex rel. West Flagler Amusement Co., Inc., v. Rose et al*, 165 So. 60, (Fla. 1935).

²¹ *Id.* In 1938, the Florida Supreme Court reiterated its holding in *State ex rel West Flagler Amusement Co., Inc.*, and held that the commission acted within its authority in the reapportionment of racing dates. It stated that the law does not require an equal number of racing days between tracks as long as the dates apportioned between the tracks are apportioned in a fair and impartial manner.

²² *Ninth Annual Report of the Florida State Racing Commission* (1940) and the *51st Annual Report of the Division of Pari-Mutuel Wagering of the Department of Business Regulation* (1982).

²³ Chapter 22614, L.O.F. (1945).

²⁴ "Breaks" means the portion of a pari-mutuel pool which is computed by rounding down to the nearest multiple of 10 cents and is not distributed to the contributors or withheld by the permitholder as takeout. s. 550.002(1), F.S.

²⁵ *Fifteenth Annual Report of the Florida State Racing Commission* (1946).

By 1946, revenues had increased due to some recovery of the economy and an increase in the number of tracks. There were three horse tracks operating 120 days and an additional three dog tracks for a total of 12 dog tracks. The commission departed from its previous policy of awarding split seasons to the horse track operators and allowed each track dates for a continuous meet.²⁶

In 1947, the Legislature determined that the close proximity of the three South Florida horse tracks was producing a threat to the state's tax revenue that it derived from each track's racing activities. Furthermore, the Legislature determined that two or more horse tracks located within a radius of 100 air miles of each other could not operate on the same racing days without endangering the tax revenue and the general welfare of the public.²⁷

Therefore, it was a legislative finding that the allocation and distribution of periods of operation for and between each of those tracks located within 100 air miles of each other was to be vested solely in the discretion of the State Racing Commission. The racing season was split into three racing periods of 40 days each. In allocating a period to each track, the horse track producing the largest amount of tax revenue during the preceding year of operation was given its choice of period. The track having the second largest amount of tax revenue was given its choice of the two remaining periods, and the third track was awarded the remaining period.²⁸ The 40 day limitation also included harness racing.²⁹

In 1949, quarterhorse racing was allowed subject to certain restrictions.³⁰ Also, the number of days that tracks could race began to expand with the addition of an extra day of operation per track, provided that the net profit was deposited into a state scholarship fund.³¹ Dog tracks located North of Latitude 30 were not allowed to operate in excess of 90 days at any time during the calendar year. Effectively, this law pertained to the Pensacola Kennel Club, Orange Park Kennel Club, and Jacksonville Kennel Club.³²

In 1949, the season had a total paid attendance of 4,539,742 with the state deriving total aggregate revenue of \$13,222,461.84, which was a 1776.9 percent increase from when the sport began in 1931-32.³³

²⁶ *Id.* The continuous meet allowed the three existing horse tracks (Gulfstream, Hialeah, and Gables Racing Association, Inc., (operator of Tropical Park) to each race forty days consecutively.

²⁷ *Supra* at n. 1.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Chapter 25354 L.O.F. (1949).

³¹ Chapter 25258 L.O.F. (1949).

³² Chapter 25413, L.O.F. (1949).

³³ *51st Annual Report Division of Pari-Mutuel Wagering of the Department of Business Regulation* (1982).

The 1950s

In 1959, further distance restrictions were imposed on horse and dog tracks. The law provided that the State Racing Commission could not consider an application or issue a permit for a dogracing or horseracing facility if the facility was within 100 miles of another permitted facility.³⁴ Additionally, the Legislature provided that where there are three or more dog racing tracks, or two or more jai alai frontons located within 35 miles of each other, one dog track and one jai alai fronton could operate for a maximum of 50 days. Certain dog tracks and jai alai frontons were allowed to race and operate 50 of the maximum statutorily allowed days during a specified summer period.³⁵

In 1959 the season had a total paid attendance of 5,966,709 with a total state revenue of \$25,157,459.81.³⁶

The 1960s

In 1961, the Legislature authorized dogracing permitholders, with the exception of those located in the area between the parallel of 28 degrees North latitude and 30 degrees North latitude and lying East of the meridian of 82 degrees West longitude (the Northwest quadrant of Florida), to operate any time during the year. Each horse track was required to run an average of one race per day in which Florida horses were given preference in the entries.³⁷ The holders of the dog track permit at Key West were authorized to move their permit and operate harness racing in Broward County.³⁸

Another significant piece of legislation increased the breaks at horse tracks from 5 to 10 cents with the additional revenue earmarked for increasing purses at Florida horse race tracks.³⁹ Another act created the Florida Breeders Awards and required the tracks to pay the owners of Florida bred horses specified amounts for winning Florida races.⁴⁰

The Governmental Reorganization Act of 1969 made organizational changes in the executive branch of government, which subsequently affected the pari-mutuel industry. The Department of Business Regulation was created. It was headed by the Board of Business Regulation appointed by the Governor. The State Racing Commission was then transferred to the Department of Business Regulation by a

³⁴ Chapter 59-406, L.O.F.

³⁵ Chapter 59-453, L.O.F.

³⁶ *Supra* at n. 32.

³⁷ Chapter 61-509, L.O.F.

³⁸ *Id.*

³⁹ Chapter 63-314, L.O.F.

⁴⁰ Chapter 63-161, L.O.F.

type 1 transfer and assigned to work within the Division of Pari-Mutuel Wagering.⁴¹

In 1969, the total paid attendance was 9,912,630 with total revenue to the state of \$46,743,699.90.⁴²

The 1970s

In 1971, the department was reorganized and the State Racing Commission's functions, except for the setting of dates for track and fronton operation, were transferred to the Division of Pari-mutuel Wagering. The Legislature required that the board's membership had to be either reappointed or replaced each time a Governor was elected or reelected.⁴³

The statute governing the racing dates for the horse racing season was declared unconstitutional. The statute divided the horse racing season into three periods and allocated to the race course producing the largest amount of tax revenue during the preceding year the right to operate during the period of its choice. The Florida Supreme Court affirmed the lower courts decision holding that the statute effectively gave one race course this advantage for the last twenty years by consistently awarding it the prime racing dates. The other two race tracks would never be able to produce the largest amount of tax revenue since they were shut out of the prime racing dates each year.⁴⁴ The decision restored the authority of the commission to exercise its discretion regarding racing dates among horsetracks in Dade and Broward counties.⁴⁵

In 1974, eight bills were passed designating additional charity days for different pari-mutuel facilities and providing for specific designations for the proceeds from those races,⁴⁶ and quarterhorse permitholders were authorized to race other breeds of horses such as Arabians and Appaloosas.⁴⁷

In 1978, there was another reorganization of the department. The board was abolished and replaced by the Secretary of the Department of Business Regulation and the Florida Pari-mutuel Commission was created. The commission consisted of five members appointed by the Governor with four-year staggered terms. The commission operated within the Department of Business Regulation. It was primarily responsible for awarding racing dates and for approving capital

⁴¹ Chapter 69-106, L.O.F.

⁴² *Supra* at n. 32.

⁴³ Chapter 71-98, L.O.F.

⁴⁴ *Hialeah Race Course, Inc. v. Gulfstream Park Racing Ass'n*, 245 So. 2d 625 (Fla. 1971).

⁴⁵ *Id.* at 629.

⁴⁶ Chapters 74-94, 74-266, 74-268, 74-269, 74-330, 74-331, 74-349, and 74-350, L.O.F.

⁴⁷ Chapter 74-178, L.O.F.

improvement expenditures.⁴⁸ The director of the Division of Pari-mutuel Wagering was granted limited authority to approve minor changes in the racing dates.⁴⁹

In 1979 total paid attendance was 17,274,154 with total revenue to the state of 103,829,406.55.⁵⁰

The 1980s

In 1980, the Legislature determined that the operation of legalized pari-mutuel betting had become a substantial business compatible with the best interest of the state.⁵¹ In order to get the full benefit of attracting the summer tourist business the Legislature authorized summer jai alai in those counties where there were five or more pari-mutuel permitholders. It also provided for the conversion of a harness racing permit to a dogracing permit.⁵²

In 1983, the legislature reenacted the provisions of the prior year's ch. 82-149, L.O.F., which was declared unconstitutional by a circuit court as a violation of the single subject rule. The legislation, in part, authorized the division to exclude certain individuals from pari-mutuel facilities, and substantially revised and simplified the laws governing charity day performances.⁵³

Probably the most significant legislation to come out of the 1984 legislation for pari-mutuels was giving the tracks permission to simulcast races or games. This allowed tracks and frontons to broadcast races or games to out-of- state locations and to receive out-of state broadcasts of games and races.⁵⁴

In 1987, the legislature provided a special tax structure for the 1,075 additional racing days that were granted to greyhound, jai-alai, and harness racing permitholders.⁵⁵ In 1988, the Legislature granted certain greyhound and jai alai permitholders 497 more days of racing, and also deleted the special tax structure

⁴⁸ Chapter 78-131, L.O.F.

⁴⁹ *Id.*

⁵⁰ 51st Annual Report Division of Pari-Mutuel Wagering of the Department of Business Regulation (1982).

⁵¹ Chapter 80-86, L.O.F.

⁵² *Supra* at n. 1.

⁵³ Chapter 83-56, L.O.F., *The Fifty Second Annual Report of the Division of Pari-Mutuel Wagering of the Department of Business Regulation (1983); Analysis for HB 1341*, House Committee on Regulated Industries and Licensing, May 14, 1983.

⁵⁴ Chapter 84-9, L.O.F. Simulcasting is defined as "broadcasting events occurring live at an in-state location to an out-of-state location, or receiving at an in-state location events occurring live at an out-of-state location by the transmittal, retransmittal, reception, and rebroadcast off television or radio signals by wire, cable, satellite, microwave, or other electrical or electronic means for receiving or rebroadcasting the events. s. 550.002(32), F.S.

⁵⁵ Chapter 87-38, L.O.F.

that was applicable to the additional days granted previously.⁵⁶ The commission reported that the effect of this legislation had been an increase in pari-mutuel handle and state revenues and served to partially offset the estimated impact of the Lottery on the industry.⁵⁷

There was a jai alai players' strike in the beginning of April 1988 resulting in a loss to frontons of 153 scheduled performances. Efforts to continue with the scheduled performances were made by bringing in players from the amateur schools in Miami and flying in additional players from Spain and France. Jai Alai frontons in Ft. Pierce and Ocala would also transfer players back and forth.⁵⁸ The commission awarded extra performances for the following season to make up for the losses.⁵⁹

In 1989, the commission reported that the jai alai industry was still being affected by the strike and attendance had declined 22 percent in the 1988/1989 season. Economic relief was provided by allowing jai alai and greyhound permitholders an additional 2 percent takeout on the exotic wager handle.⁶⁰

In December 19, 1989, Hialeah Park closed as a result of declining attendance and handle. Because a deviation from assigned racing dates is a violation of Florida Statutes, the division suspended Hialeah's racing license for the remainder of the 1989-90 season.⁶¹

In 1989, the total paid attendance was 15,719,962 with total state revenue of \$118, 466,567. This was the first year that attendance and revenue show a decline.⁶²

The 1990s

During the first three months of Fiscal Year 1990/91, agreements were reached between players and management at most Florida frontons, resulting in players returning to work.

⁵⁶ Chapter 88-346, L.O.F.

⁵⁷ *Fifty Seventh Annual Report Department of Business and Professional Regulation Division of Pari-Mutuel Wagering* (1988).

⁵⁸ Conversation with Jai alai industry representative.

⁵⁹ *Id.*

⁶⁰ *Fifty-eighth Annual Report Department of Business and Professional Regulation Division of Pari-Mutuel Wagering* (1989). Exotic wagering pools are pools, other than the traditional win, place, or share pools, into which a contributor can place a wager on more than one entry or on more than one race or game in the same bet and which includes, but is not limited to, daily doubles, perfectas, quinelas, quinela daily doubles, exactas, trifectas, and Big Q pools. s. 550.002, F.S.

⁶¹ *Fifty-ninth Annual Report Department of Business and Professional Regulation Division of Pari-Mutuel Wagering* (1990).

⁶² *62nd Annual Report Division of Pari-Mutuel Wagering* (1983).

In 1990, the Legislature approved intertrack wagering for all pari-mutuel industries in the state, as well as common pool wagering with out-of-state tracks.⁶³ Sunday performances were approved for jai-alai and greyhound permitholders and matinees were permitted without the necessity of having evening performances. Tax relief was granted to jai alai and greyhound permitholders allowing them to reduce their effective tax rate to a minimum of 5.1 percent and 5.6 percent, respectively, by allowing them to earn a tax credit based on the amount of tax paid in the Fiscal Year 1989-90.⁶⁴

In 1991, the Legislature directed the commission to conduct a feasibility study of state ownership of Hialeah Park.⁶⁵ Eight dog racing permitholders were authorized to conduct an aggregate total of up to 456 additional performances during their operational season and the prohibition of Sunday racing for greyhound and jai alai permitholders was deleted.⁶⁶

The commission reported that the 1992 Legislative Session was one of the most turbulent and frustrating sessions in the memory of both industry and government members. A scheduled sunset of the majority of the pari-mutuel statutes on July 1992, led the House of Representatives and the Senate initiating two separate and distinctly different bill drafts.⁶⁷ By the end of the fourth Special Session, the pari-mutuel industry was still without a statute. Each legislative body refused to take up the other's bill. The commission reports that the reason for the impasse most often cited was the Senate's objection, the House's provision authorizing video lottery machines, the size of greyhound purses and the racing dates for South Florida thoroughbreds.⁶⁸

The pari-mutuel laws were set to expire on July 1, 1992. The Department of Business Regulation stated that it would be illegal to conduct pari-mutuel wagering if the laws expired. Therefore, the industry sought injunctive relief, and on June 29, 1992, the Circuit Court of the Second Judicial Circuit issued a temporary injunction which allowed the tracks and frontons to operate under the old law. On August 25, 1992, the court issued an opinion that pari-mutuel gambling in Florida was legal under the remaining statutes, and the remaining language was sufficient to allow for deregulated operation of the facilities.⁶⁹

⁶³ Intertrack wagering is defined as a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, in-state track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal rebroadcast from , another in-state pari-mutuel facility. s. 550.002, F.S.

⁶⁴ Chapter 90-352, L.O.F.

⁶⁵ Chapter 91-197, L.O.F.

⁶⁶ *Id.*

⁶⁷ *Sixty First Annual Report from the Florida Department of Business Regulation Division of Pari Mutuel Wagering for Fiscal Year ending on June 30, 1992.*

⁶⁸ *Id.*

⁶⁹ *Id.*

The department reported that the effects of the statutory repeal were substantial and included a drastic revision of the pari-mutuel tax structure, including the loss of all tax exemptions. All racing and jai alai dates were deregulated as well as the requirements for purses, owners' awards, breeders' awards, and take-out. The Florida Pari-mutuel Commission was abolished, as were capital improvements and much of the regulatory authority of the division.⁷⁰

The division adopted emergency rules in an attempt to reinstitute some of its regulatory powers. The rules authorized the division to continue to regulate pari-mutuel pools, collect taxes, issue occupational licenses, continue the authority of track judges and stewards, and the drug and medication requirements.⁷¹

During the Special Session held on December 9, 1992, the Legislature passed HB 37-A, which gave regulatory authority to the division and re-established many provisions of the prior law. The bill was effective December 16, 1992.⁷²

The most significant changes to come out of the 1993 Regular Session were a revised tax structure of the thoroughbred, harness, and jai alai industries. Racing and game dates and take-out continued to be unregulated and no tax exemption or other tax relief was granted for the greyhound industry and no greyhound purse provision were established.⁷³

The racing season for greyhound, jai alai, and harness racing permitholders was established from July 1 to June 30 of each year, but the racing dates were deregulated. Permitholders were required to file their planned operating dates for the next fiscal year by January 4 of each year.⁷⁴

In 1996, legislation removed many of the limitations on simulcast and intertrack wagering. In part, it authorized simulcasting for all horseracing and jai alai permitholders and greyhound permitholders in Dade and Broward counties.⁷⁵ It abolished the requirement that the South Florida tracks receive consent from each other before they could engage in intertrack wagering and added the requirement that, in order to receive simulcasting, the permitholder must be conducting live performances.⁷⁶

Cardrooms at pari-mutuel facilities were legalized if such activity was approved by ordinance of the county commission where the pari-mutuel facility was located. The winnings of any player in a single round, hand or game could not exceed \$10

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Chapter 93-123 L.O.F.

⁷⁴ *Id.*

⁷⁵ Chapter 96-364, L.O.F.

⁷⁶ *Id.*

and the fee charged to participate in the game could not be included in the calculation of the pot limit.⁷⁷

In Fiscal Year 1997-98, the first full year of cardroom operations, 15 cardrooms were licensed and cardroom tax revenue totaled \$652,593. In Fiscal Year 1998-99, cardrooms numbered 14 and cardroom tax revenues totaled \$559,851. During Fiscal Year 1999-2000, cardroom tax revenues fell to \$475,821 and in Fiscal Year 2000-01, tax revenues totaled \$391,052. For Fiscal Year 2001-02, tax revenues totaled \$359,778.

The 1998 legislative session brought tax breaks for the pari-mutuel industry by repealing the sunset language enacted in 1996, thus preventing the “temporary” tax breaks in 1996 from being rescinded. Permitholders were able to maintain certain live, simulcast, intertrack, and intertrack simulcast tax rates which were scheduled to sunset on July 1, 1998.

The 1999 Legislative Session saw no new legislation for the pari-mutuel industry. However, Senate and House bills were introduced to establish a video lottery.⁷⁸

2000-2004

The 2000 Legislative Session brought \$20 million in tax reductions for permitholders by reducing live, simulcast and intertrack tax rates.⁷⁹ Purses were increased for dog owners and kennel operators, as were the awards for breeders and stallions. Additionally, the distribution of the county allocations from the pari-mutuel revenue collections was transferred from the Pari-mutuel Wagering Trust Fund to the General Revenue Fund.⁸⁰

In the 2003 Legislative Session, the statutory restrictions for cardrooms were relaxed. A \$2 maximum wager with a maximum of three raises in any round of betting replaced the \$10 pot limit. The fee for playing the game was not included in the calculation of the bet amount.⁸¹

According to the Department of Business and Professional Regulation, this would mean that for a game like seven card stud with seven participants, the maximum pot value could reach \$200 due to the number of raises and rounds played. Although some games would not reach this dollar amount, pot sizes would generally be higher under the new legislation, providing a greater incentive to potential participants and for cardroom operators to increase their total number of tables.

⁷⁷ *Id.*

⁷⁸ SB 2176 and HB 1453.

⁷⁹ *Supra* at n. 3.

⁸⁰ Chapter 2000-354, L.O.F.

⁸¹ Chapter 2003-261; L.O.F. s. 4 and ch. 2003-295, L.O.F.

The division has reported a significant increase in cardroom tables and cardroom revenues since the legislation passed. In Fiscal Year 2003-04, cardroom tables increased from 211 to 280 in the 15 authorized facilities. Another 50 tables have been added in the first three months of Fiscal Year 2004-05. Revenues from table fees for Fiscal Year 2003-04 were \$202,000. In just the first three month of Fiscal Year 2004-05, the revenues for table fees have reached \$172,500. (See Appendix 1.)

2. A Declining Industry

Despite the introduction of simulcast wagering, tax reductions, and cardrooms the pari-mutuel industry has seen a consistent decrease in its pari-mutuel handle and its revenues to the state. In a 2003 report, the Office of Program Policy and Government Accountability (OPPAGA) stated that over the last decade, Florida's pari-mutuel wagering industry has declined steadily, due in part to increased competition from the state lottery, tribal casino and gambling cruise ships. (See Appendix 2.)The report states that the decline is most apparent in the significant decrease in attendance at the pari-mutuel facilities which fell from 14.4 million in Fiscal Year 1990-91 to 2.8 million in Fiscal Year 2001-02. It further indicated that the amount of money wagered at the facilities has also declined though not as dramatically as attendance. The only increase shown has been an increase in wagering on simulcast events.⁸²

Several pari-mutuel facilities have also gone out of business over the past decade including Volusia, Tampa and Palm Beach Jai Alai as and Seminole Greyhound Park. Hialeah Park has not scheduled races since Fiscal Year 2001-02, and a recent opinion from the Division of Administrative Hearings recommended that a final order be issued revoking Hialeah Park's thoroughbred racing permit and denying its application for a racing license for the 2003-2004 thoroughbred racing season.⁸³

As noted above, the Legislature has decreased taxes on the industry. In the 2000 Regular Legislative Session, the rates were reduced for live and simulcast performances from:

7.6 percent to 5.5 percent for greyhound permitholders;
4.25 percent to 2 percent for jai alai permitholders;
3.3 percent to 1 percent for quarter horse permitholders; and
1 percent to 0.5 percent for harness permitholders.⁸⁴

⁸² *Supra* at n. 3.

⁸³ *DBPR vs. Hialeah Racing Association*, Case No. 03-1459, Division of Administrative Hearings.

⁸⁴ *Supra* at n. 3.

The pari-mutuel industry peaked in Fiscal Year 1987-88 with over \$2 billion in total handle and \$125.3 million in taxes to the state⁸⁵ Since Fiscal Year 1987-88, the amount of state tax revenue has declined 76.9 percent, from \$125.3 million to \$28.9 million in Fiscal Year 2003-04.⁸⁶ The overall tax rate for the industry in Fiscal Year 1987-88 was 6.7 percent and the overall tax rate for the industry in Fiscal Year 2003-04 was two percent.

The total handle in Fiscal Year 2003-04 was \$1.4 billion. The total handle for the industry has declined 30 percent since Fiscal Year 1987-88. The total handle for the Greyhound industry was \$1.02 billion in Fiscal Year 1987-88 and \$491.9 million in Fiscal Year 2003-04, for a decline of 52 percent. The jai alai industry's total handle for Fiscal Year 1987-88 was \$430.3 million and for Fiscal Year 2003-04, the handle was \$93.8 million. The jai alai industry's handle declined 78 percent during that time. The total handle for the thoroughbred industry in Fiscal Year 1987-88 was \$466.5 million and the industry's handle in Fiscal Year 2003-04 was \$758.9 million, for an increase of 63 percent. The harness industry has also had an increase in its handle from \$85.1 million in Fiscal Year 1987-88 to \$95.1 million in Fiscal Year 2003-04. This is an increase of 12 percent.

The Legislature changed the operating conditions for cardrooms as noted above. The Office of Program Policy and Government Accountability estimate that these changes will increase facility gross receipts by \$8.3 million and generate \$879,000 in additional state revenue for Fiscal Year 2003-04.⁸⁷

3. Industry Survey

Staff sent a survey to the 27 existing pari-mutuel facilities in Florida asking questions about each facilities experience and perception of what changes have occurred in the industry to cause its decline. The survey also sought information on how to increase profits, handle and attendance for the facilities. Seventeen of the 27 facilities provided responses. (See Appendix 3.)

A majority of the facilities have experienced a decrease in attendance, handle and profitability. A majority of the respondents attributed these changes to competition from the lottery, cruises to nowhere, Indian gaming, competition from other entertainment, and their inability to expand technology. Other responses included taxes, simulcasting, internet gaming, adult arcades, casinos in Mississippi, and competition from within the industry.

⁸⁵ *Total to state 44/45 to 03-04*, Division of Pari-mutuel Wagering, Department of Business and Professional Regulation.

⁸⁶ *Total pari-mutuel handle to state 44-45 to 03-04*, Division of Pari-mutuel Wagering, Department of Business and Professional Regulation.

⁸⁷ *Supra* at n. 80

When asked if any legislative changes had affected attendance, handle and profitability, the responses were varied. The smoking ban and the lottery were cited as having an adverse affect on all three. While the changes to the cardroom pot limits and the reduction in taxes were cited as having a positive affect.

All facilities indicated that they would support an expansion in gambling. Almost 100 percent of the respondents stated that Video lottery terminal legislation would have a positive affect on the industry. (See Appendix 4.)

B. The Lottery

1. Establishment of the Lottery and Revenue Contributions to Education

In 1986, Florida voters approved a constitutional amendment authorizing the state to operate a lottery. The 1987 Legislature subsequently enacted ch. 87-65, L.O.F., codified at ch. 24 F. S., known as the Florida Public Education Lottery Act. The act created the Department of Lottery and charged it with operating “as much as possible in the manner of an entrepreneurial business generate significant additional funds for education in a manner consonant with the dignity of the state and welfare of its citizens.”⁸⁸

The Department of the Lottery reports that Lottery revenues have increased from \$2.1 billion in Fiscal Year 1998-99 to more than \$3 billion in Fiscal Year 2003-04. Transfers to the Education Enhancement Trust Fund have increased from \$807 million in Fiscal Year 1998-99 to, for the second consecutive year, more than \$1 billion in Fiscal Year 2003-04. The chart in Appendix 4 illustrates the current distribution of educational funds.

In January 2004, OPPAGA reported that the Legislature’s amendments to the law to use unclaimed prize money as a means to increase payouts for scratch-off games resulted in an additional \$27 million being transferred to the Education Enhancement Trust Fund (EEFT) in Fiscal Year 2002-2003.⁸⁹ The Legislature also increased the bond requirement for filing a bid protest, and the Lottery hired a consultant to review its procurement procedures, which contributed to the successful procurement of the Florida Lottery’s latest on-line vendor contract. The Legislature also reduced its appropriation by \$1.6 million for the Fiscal Year 2003-04 based on OPPAGA’s estimates of annual savings from centralizing prize redemption functions.⁹⁰ (See Appendix 5.)

⁸⁸ Section 24.102(2), F.S.

⁸⁹ *Progress Report Florida Lottery Makes Progress by Implementing Many Justification Review Recommendations*, Report No. 04-01, Office of Program Policy Analysis and Government Accountability, Florida Legislature, January 2004.

⁹⁰ *Id.*

However, the latest estimates from the Office of Economic and Demographic Research project even greater revenues from the Lottery. In October 2004 the Consensus Estimating Conference on Lottery Revenues increased the estimates for Fiscal Year 2004-05 by \$31.5 million and \$67.5 million for Fiscal Year 2005-06.⁹¹ The conference attributed the change in the revenue forecast to two factors: 1) the new enhancement to lottery products which will be provided by the new Lottery vendor contract, which goes into effect on January 31, 2005, and 2) the sales of scratch-off games running higher than expected.

These positive impacts have reportedly been partially offset by two negative impacts: 1) the four hurricanes have caused a reduction in sales in 2004-05 of approximately \$40 million, with a corresponding decline in transfers to the EETF of about \$12 million and 2) the Lotto sales have been running considerably lower due to the lack of rollover, along with lower interest rates. This reduced the forecast by \$66.2 million in 2004-05 and by \$30.5 million in 2005-06, before adding the impact of the new contract.

2. Lottery Still Faces Challenges

Despite these projected estimates of increased revenue for the Lottery, OPPAGA reports that the Lottery is still facing challenges to maintain its revenue growth despite the improvements that have been made. It provided that if it were not for a \$30.1 million unclaimed jackpot in Fiscal Year 2003-04, the Lottery transfers to education would have declined slightly. OPPAGA reports that the Lottery is facing competition from the seven tribal casinos including two Seminole Hard Rock casinos that have opened in Hollywood and Tampa in 2004, the Cruises to Nowhere, and Amendment 4 adopted at the 2004 General Election.⁹²

OPPAGA recommends that options to increase revenues and transfers to Educations include: 1) continuing to create new games or changing on-line game prize payouts; 2) continuing to explore other game options; 3) increasing the number and quality of the retailers and; 4) increasing advertising.

Further, it states, that due to the legislative changes in 2002,⁹³ authorizing the Department of the Lottery to use unclaimed prize money as a means to increase scratch-off game prize payouts has increased prize money and consequently increase sales. The Lottery is also considering using unclaimed prize money to fund initial Lotto and Mega Money jackpots when there is insufficient revenue

⁹¹ *The Florida Legislature Lottery Revenues Executive Summary*, Office of Economic & Demographic Research October, 2004. The total estimates are \$1.029 billion in Fiscal Year 2004-05 and \$1.072 billion in Fiscal Year 2005-06.

⁹² *Supra* at n. 6.

⁹³ Chapter 2002-227, L.O.F.; and s. 24.121(1), F.S.

from sales. The option of transferring the unclaimed prize money directly to education has also been explored by the Lottery and the Legislature. However, OPPAGA reports that transferring the unclaimed prize money, rather than investing in higher payouts, would probably not result in increased transfers to education.

II. The Competition to the Pari-mutuel Industry and the Lottery

A. Cruises to Nowhere

“Cruises to Nowhere” are currently operating in Florida and are authorized under the “Johnson Act,”⁹⁴ The industry in Florida has grown from one ship in 1984 to 17 ships today with an estimated 4.4 million passengers.⁹⁵ The ships operate out of every major port on the Florida peninsula (except the Panhandle). The vessels leave a Florida port and cross the three-mile boundary of Florida’s territorial waters. Upon reaching their destination, beyond the three-mile Florida boundary, the casinos are opened and the casinos and the slot machines are operated. Upon the conclusion of the gaming activities, the slot machines are closed and the vessels return to the same ports from which they departed.

Section 849.231, F.S., permits certain prescribed gambling instruments or apparatus to be held, sold, transported, or manufactured by persons who have registered with the United States government pursuant to the provisions of the “Johnson Act,” so long as the described implements or apparatus are not displayed to the general public, sold for use in Florida or held or manufactured in contravention of the requirements of the “Johnson Act.”

The gambling activities on these ships are not regulated by the State of Florida, nor are the gambling revenues subject to taxation. However, the industry does collect and remit Florida’s excise taxes on alcoholic beverages⁹⁶ and by-the-drink tax⁹⁷ to the Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation. The industry also pays sales and use taxes on purchases of tangible personal property, purchases of diesel fuel, and on admission charges,⁹⁸ it collects and remits sales tax on the sale of tangible

⁹⁴ 15 U.S.C. 1171-1177, and 18 U.S.C. 1081-1083.

⁹⁵ *Cruises to Nowhere*, The Florida Senate Interim Project 2004-138.

⁹⁶ Section 563.05, 564.06, and 565.12, F. S.

⁹⁷ Section 561.501, F. S.

⁹⁸ Though the admission charges are taxable, according to a 2003 report prepared by the University of Florida, only four of the cruises to nowhere were currently charging an admission fee. *Description of the Day Cruise Industry in Florida*, Center for Tourism Research & Development, University of Florida.

personal property while in Florida waters as well as corporate income taxes and prorated alcoholic beverage taxes.⁹⁹

In 2002, the industry reportedly contributed in excess of \$17.4 million in federal, state and local taxes, with state taxes and fees totaling \$5.4 million and local taxes and fees totaling \$1.1 million. The industry also contributed to Florida's economy by employing 2,854 full-time and 266 part-time employees, with a total payroll of \$63.3 million, and spent in excess of \$82 million on goods and services purchased from local vendors. Deep water port fees totaled \$17.8 million and \$4.9 million was paid to landlords of marinas.¹⁰⁰

Currently there are three pending Florida Supreme Court cases in which members of the cruise industry are challenging whether the State of Florida is entitled to prorate taxes on concessions and gaming equipment.¹⁰¹ Florida courts have previously upheld the state's authority to tax payments involving gaming equipment and concessions because the installation and maintenance of the equipment occurs in Florida.¹⁰² However, according to the Department of Revenue, if the cruise industry prevails in these cases, these tax assessments would be reduced to nearly \$0.¹⁰³

B. Indian gaming

There are currently seven Florida Tribal casinos, including two recently opened Hard Rock casinos in Hollywood and Tampa, offering a variety of poker games and electronic bingo. Information regarding the revenues generated by these tribes is unavailable, but revenue estimates have been released on a regional basis by the Indian Gaming Commission. Florida falls into Region VI which includes Alabama, Connecticut, Florida, Louisiana, Mississippi, North Carolina, and New York. There are 24 Indian Gaming Operations in this region with gaming revenues at over \$4 billion for Fiscal Year 2003-04. These revenues are untaxed by the state.¹⁰⁴ (See Appendix 5.)

Indian gaming began in Florida in 1979 when the Seminole Tribe opened a bingo hall.¹⁰⁵ In 1981, a federal court ruled that the statute permitting bingo games could

⁹⁹ *Supra* at n. 7.

¹⁰⁰ *Id.*

¹⁰¹ *Department of Revenue v. New Sea Escape Cruises, Ltd. v. Florida Department of Revenue*, Case No. SC 02-2013, *Dream Boat, Inc. v. Department of Revenue*, Case No. SC 03-0637, *Deerbrooke Investments, Inc. v. Department of Revenue*, Case No SC 03-2266.

¹⁰² *New Sea Escape Cruises, LTD, v. Florida Department of Revenue*, 823 So. 2d 161 (4th DCA 2002).

¹⁰³ Communication with the Department of Revenue, November 17, 2004.

¹⁰⁴ Indian Gaming Commission website <http://www.nigc.gov/nigc/index.jsp> (last visited November 18, 2004).

¹⁰⁵ *Supra* at n. 8.

not be enforced against the Seminole Indian Tribe and, therefore, Indians as well as non-Indians could play bingo at the tribal facility.¹⁰⁶ This was part of a trend in the United States that began that in the 1970's when several tribes opened bingo operations as a way to raise revenues to fund tribal government operations. States were also exploring state-sponsored gaming as a way to increase state revenues.¹⁰⁷

In 1987, the U.S. Supreme Court held that tribal governments have the authority to establish gaming operations independent of state regulation provided that the state in question permits some form of gaming.¹⁰⁸ In the case, the Cabazon and Morongo Bands of Mission Indians were operating bingo games on their reservation pursuant to a federally recognized ordinance approved by the Secretary of the Interior. The California Code permitted bingo if the games were operated and staffed by members of designated charitable organizations and the profits were used for charitable purposes. California asserted that the tribes did not comply with these restrictions.

The Tribes sued Riverside County, California, seeking a declaratory judgment that the county had no authority to apply its ordinances inside the reservations and an injunction against their enforcement. The State of California intervened and the U.S. District Court granted the Tribes' motion for summary judgment, holding that neither the state nor the county had any authority to enforce its gambling laws within the reservations and the state and county appealed. The Court of Appeals affirmed and the state, and county again appealed.¹⁰⁹

The State of California argued that the high stakes offered at tribal games are attractive to organized crime, whereas the controlled games authorized under California law are not. The U.S. Supreme Court held that the state's interest in preventing the infiltration of the tribal bingo enterprises by organized crime does not justify state regulation of the tribal bingo enterprises in light of the compelling federal and tribal interests supporting them.¹¹⁰ The court cited the compelling federal and tribal interests in Indian self-government, and the overriding goal of encouraging tribal self-sufficiently and economic development. The Court further held that because California permitted a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery, it must conclude that California regulates, rather than prohibits, gambling in general and bingo in particular.

¹⁰⁶ *Supra* at n. 9.

¹⁰⁷ *Annual Report* National Indian Gaming Commission, 2003.

¹⁰⁸ *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

¹⁰⁹ *Cabazon Band of Mission Indians v. County of Riverside, State of California*, 783 F.2d. 900 (9th Cir. 1986).

¹¹⁰ *Supra* at n. 108.

C. Indian Gaming Regulatory Act

Congress passed the Indian Gaming Regulatory Act of 1988 (IGRA)¹¹¹ in order to provide a statutory basis for the operation and regulation of gaming by Indian tribes.¹¹² The act permits states to determine the scope and extent of tribal gaming through tribal-state compacts for Class III gaming and gives the tribes regulatory authority over Class I and II gaming.¹¹³

Each of the three classes of games provided in the IGRA has different regulatory schemes. Class I gaming is defined as traditional Indian gaming and social gaming for minimal prizes.¹¹⁴ Regulatory authority over Class I gaming is vested exclusively in tribal governments.¹¹⁵

Class II gaming includes bingo and card games. Bingo is defined as a game of chance (whether or not electronic, computer or other technological aids are used) and, if played in the same location as bingo, including pull-tabs, punchboards, tip jars, instant bingo, and other games similar to bingo. Card games are defined as those that are explicitly authorized by the laws of the state or are not explicitly prohibited by the state. Slot machines or electronic facsimiles of any game of chance are specifically excluded from the definition of Class II games.¹¹⁶

Class III gaming includes all forms of gaming that are neither Class I nor II.¹¹⁷ These games include casino games such as roulette, craps, and keno, slot machines, banking card games, any sports betting and pari-mutuel wagering, and lotteries.¹¹⁸

Before a tribe may lawfully conduct Class III gaming, the following conditions must be met: (1) the particular form of Class III gaming that the tribe wants to conduct must be permitted in the state in which the tribe is located; (2) the tribe and the state must have negotiated a compact that has been approved by the Secretary of the Interior, or the Secretary must have approved regulatory procedures; and (3) the tribe must have adopted a tribal gaming ordinance that has been approved by the Indian Gaming Commission or its chairman.¹¹⁹

The compact may contain any subjects directly related to the operation of gaming activities. A state or political subdivision does not have authority to impose taxes, fees, charges, or other assessments upon tribes that seek to operate Class III

¹¹¹ 25 U.S.C. 2701, U.S.C. et seq.

¹¹² *Seminole Tribe of Florida v. State of Florida*, 517 U.S. 44 (1996).

¹¹³ *Supra* at n. 73.

¹¹⁴ 25 U.S.C. s. 2702(6).

¹¹⁵ 25 U.S.C. s. 2710(a)(1).

¹¹⁶ 25 U.S.C. s. 2702(7).

¹¹⁷ 25 U.S.C. s.2702(8).

¹¹⁸ 25 CFR s. 502.4.

¹¹⁹ 25 U.S.C. s. 2710(d).

gaming and it prohibits a state from refusing to negotiate based on the lack of authority in such state, or its political subdivision to, imposing a tax, fee, charge, or other assessment.

A tribe may agree to pay assessments to a state or a political subdivision to defray the costs of state regulation of its Class III gaming activities and may agree to a payment in lieu of taxes to the state in amounts comparable to amounts assessed by the state for comparable activities.¹²⁰

In 1991, the Seminole Tribe sued the State of Florida and its Governor, Lawton Chiles, alleging that the State of Florida violated the requirements of the IGRA by failing to negotiate in good faith a Class III gaming compact. The State of Florida moved to dismiss the complaint arguing that the Eleventh Amendment gave the state sovereign immunity from suit in Federal Court. The United States District Court for the Southern District of Florida denied the State of Florida's motion to dismiss and held that the IGRA on its face abrogated the state's Eleventh Amendment immunity and that Congress had the power to abrogate the immunity pursuant to the Indian Commerce Clause.¹²¹

The Eleventh Circuit Court of Appeals disagreed with the District Court's holding that the Indian Commerce Clause granted Congress the power to abrogate a state's Eleventh Amendment immunity and concluded that the court had no jurisdiction over the tribe's suit against the State of Florida and Governor Chiles.¹²²

The tribe sought review of the Eleventh Circuit's decision by the U.S. Supreme Court. The Supreme Court granted certiorari and held, in part, that the Eleventh Amendment prohibits an Indian tribe from suing a state in Federal court for an alleged failure of the state to negotiate a compact in good faith.¹²³

In April 1999, regulations were promulgated by the Department of Interior that would allow the licensing of Indian Class III gaming without the state's consent. Florida's Attorney General challenged the Secretary's authority for promulgating such regulations in Florida's Northern District Federal Court. The case is being held in abeyance until such time as the Department of Interior is actually poised to license a Florida tribe to engage in Class III gaming pursuant to the new regulations.¹²⁴

The U.S. Department of Interior reports that, as a consequence to the Supreme Court's decision in *Seminole Tribe v. State of Florida*, more states have sought to

¹²⁰ *Id.*

¹²¹ *Seminole Tribe of Florida v. State of Florida*, 801 F. Supp 655 (S.D. Fla. 1992). Article I, s. 8, cl. 3, U.S. Constitution.

¹²² *Seminole Tribe of Florida v. State of Florida*, 11 F. 3d 1016 (11th Cir. 1994).

¹²³ *Seminole Tribe of Florida v. State of Florida*, 517 U.S. 44, (1996).

¹²⁴ *Staff Analysis for CS/SB 1920*, Senate Regulated Industries Committee, April 14, 2003.

include revenue-sharing provisions in Class III gaming compacts. The department reports that it has only approved revenue-sharing payments that call for tribal payments when the state has agreed to provide valuable economic benefit for what it calls “substantial exclusivity” for Indian gaming in exchange for the payment. The department then has an obligation to ensure that the benefit received by the state is appropriate in light of the benefit conferred on the tribe. When the payment exceeds the benefit received by the tribe, it is considered a violation of the IGRA because it could be considered an unlawful tax, fee, charge, or assessment.

Since 1988, Connecticut, New Mexico, Wisconsin, California, New York, and Arizona have all negotiated compacts with revenue sharing provisions.¹²⁵ These revenue sharing compacts have the capability of bringing substantial revenues to these states.¹²⁶

In 1989, Connecticut entered into an agreement with the Mashantucket Pequot Tribe that gives the state either \$100 million or 25 percent of its net revenues annually, whichever was greater, as long as nontribal casinos were not permitted in the state. A second agreement was entered into with the Mohegan tribe in 1996 where Connecticut’s general fund receives \$405 million in Fiscal Year 2004-05 from the two tribal casinos, with local governments receiving \$85 million of the total.

In 2002, Arizona negotiated a compact that allows tribal slot machines and card and table games. The tribes share revenue on a sliding scale between one and eight percent of the net win (amount wagered less payouts).¹²⁷ The fund allocates \$34.8 million in Fiscal Year 2004-05 for state regulatory and administrative costs, treatment of problem gambling, instructional improvement funds to school districts, trauma emergency services, tourism, and wildlife conservation.

California receives more than \$130 million annually from more than half of the state’s 107 federally recognized Indian tribes. California’s Proposition 70, which would have required the Governor to allow interested tribes to operate an unlimited number of slot machines and other games like roulette and craps for 99 years in return for paying the state 8.8 percent of the revenues, failed to pass in the November 2004 election.

¹²⁵ From the Statement of Aurene M. Martin, Acting Assistant Secretary – Indian Affairs, Department of the Interior Before the Committee on Indian Affairs United States Senate on the Indian Gaming Regulatory Act, July 9, 2003.

¹²⁶ Information on the compacts was received from the National Conference of State Legislatures, which based its data on information it received from the state legislative fiscal offices.

¹²⁷ Letter from the U.S. Department of the Interior to the Governor of Arizona regarding the compliance review under the IGRA of tribal state compacts, January 24, 2003.

Michigan will receive approximately \$15 million in Fiscal Year 2004-05 from newly negotiated compacts. Revenues from previously negotiated compacts with seven tribes operating 14 casinos terminated when the tribes lost the exclusive right to conduct electronic gaming within the state borders.

New Mexico entered into agreements which have projected revenues of \$34.7 million to the state's general fund in Fiscal Year 2004-05 and has the possibility of an additional \$24 million in back payments from the Mescalero Apache Tribe.

New York's governor has entered a compact with the Seneca Nation that generated \$38.9 million in Fiscal Year 2003-04. The agreement provides that the state receive the initial 18 percent of the revenue with a cap in later years at 25 percent.

Wisconsin amended its existing compacts between 1998 and 1999 that would provide tribal payments of approximately 7.6 percent of net revenues to the state. The compacts were amended again in 2003 to increase the revenue sharing amounts. However, in May 2004, the Wisconsin Supreme Court struck down a key portion of the new amended compacts which may affect the \$100 million in 2004 revenue sharing payments anticipated by the state.

Kansas has negotiated a compacts with the Kickapoo Tribe and Sac and Fox Nation that would call for the state to receive about \$50 million a year and regulatory authority. It also provides that the tribe must close its two existing reservation casinos seven years after the off-reservation casino opens.¹²⁸

The compact must go through a State-Tribal Relations Committee. Once approved, it would then be forwarded for final state passage to the Legislative Coordinating Council and approved by that leadership body if the full Legislature is not in session. Once approved, it is forward to the U.S. Interior Department.¹²⁹

Minnesota Governor Tim Pawlenty recently requested the state's Indian tribes to meet and discuss a new agreement to share casino gambling revenues. Since 1989, Minnesota tribes have had negotiated compacts that gave them the right to casino gambling, but did not specifically guarantee exclusivity. Governor Pawlenty wanted to offer exclusivity in exchange for the Indians paying \$350 million a year to the state. However, the tribes failed to negotiate claiming that Pawlenty's proposal would bankrupt the operations.¹³⁰

D. Gambling in Mississippi

¹²⁸ *The Business Journal of Kansas City*, October 21, 2004.

¹²⁹ *Id.*

¹³⁰ *The Bemidji Pioneer*, October 22, 2004 and November 7, 2004.

Since 1992, Mississippi has permitted casino gambling on “cruise vessels” docked in the Gulf of Mexico and on “vessels” docked in the Mississippi River or adjoining navigable waters within counties along the Mississippi River.¹³¹ Mississippi reports revenues from Fiscal Year 2003-04 of \$332 million.¹³² Of the patrons in the gulf coast gambling facilities, the Mississippi Gaming Commission reports that 18.9 percent or 1,102,758 million patrons were from Florida.¹³³ The North and South River Regions had approximately 2.45 percent, or approximately 110,000, of the patrons from Florida

Mississippi also has one Indian casino near Philadelphia, Mississippi (near the middle of the state). The tribal casino offers casino games such as craps, roulette, blackjack, poker, baccarat-chemin de fer, and slot machines.

E. Slot Machines in Florida

A constitutional amendment authorizing Dade and Broward counties to hold referenda to determine if slot machines should be allowed in existing, licensed pari-mutuel facilities passed by a narrow margin in the November 2004 General Election. Significant costs and revenues may result for the state if the referenda are passed. The amendment permits the Legislature to tax the slot machine revenues and requires that those taxes supplement public education statewide.¹³⁴

The Financial Impact Estimating Conference provided low and high estimates for net slot machine income assuming, that both counties pass the referenda and the Legislature taxes the activity at a typical tax rate between 30 percent and 50 percent the low estimate for tax collections for the first year of operation (Fiscal Year 2005-06) is \$87.9 million and \$414.8 million by year six. The high estimate is \$215 million for the first year and \$1.01 billion for year six.¹³⁵

The conference stated that there would be a reduction in sales tax collections of between \$11.9 million and \$45 million and a reduction in the sale of lottery tickets of between \$15 million and \$63.1 million due the shift in spending.¹³⁶

Extending the methodology used for the estimates for slot machines in Miami-Dade and Broward counties to encompass all 27 pari-mutuel facilities results in estimated third year slot machine tax revenues of between \$1.0 billion and \$2.3

¹³¹ Miss. Code Ann. S. 97-33-7(4)(2004).

¹³² *Tax Revenues From Gaming*, State Tax Commission, Misc. Tax Division, www.mstc.state.ms.us/taxareas/misc/gaming/stats/gamtax.pdf.

¹³³ *Quarterly Survey Information*, July 1, 2004-September 30, 2004, Mississippi Gaming commission. <http://www.mgc.state.ms.us/> (last visited November 18, 2004).

¹³⁴ Amendment 4, <http://election.dos.state.fl.us/initiatives/fulltext/30910-2.htm> (last visited November 21, 2004).

¹³⁵ *Id.*

¹³⁶ *Supra* at n. 12.

billion. Offsetting these revenues would be losses of between \$115 million and \$170 million in sales tax revenues, and between \$145 million and \$215 million in Lottery proceeds, resulting in a net increase in all revenues of between \$700 million and \$2.0 billion. It is highly unlikely, however, that these revenue levels could be achieved due to differences in tourism levels and demographic characteristics between Miami-Dade and Broward counties and the rest of the state, and due to competition between the Miami-Dade and Broward facilities and those elsewhere in the state.¹³⁷

A group against gambling in Florida filed suit in the Leon County Circuit Court requesting that the court declare the signatures on the initiative petition forms obtained by paid petition circulators for the ballot initiative invalid and therefore barred from being counted for purposes of obtaining the requisite number of signatures needed to certify the ballot for the election.¹³⁸ The trial judge refused to schedule a pre-Election Day hearing and set a date for January 2005.

¹³⁷ Information received from the Office of Economic and Demographic Research, Florida Legislature.

¹³⁸ *Floridians Against Expanded Gambling, The Humane Society of the United States, and Grey2K USA, INC., v. Floridians for a Level Playing Field, Glenda Hood, in her official capacity as Secretary of State; the Department of State, Brenda C. Snipes, in her official capacity as the Supervisor of Elections of Broward County, et al.*, Case No. 04-CA-2342 (Fla. 2d Cir Ct).

Conclusions

Legalized gaming in Florida faces challenges. Attendance and revenue have been on the decline in the pari-mutuel facilities in Florida since the late 1980s and the Lottery continues to face challenges in meeting future revenue demands. Competition in the marketplace has contributed to these declines and challenges. The competition, which includes Indian tribal casinos, Cruises to Nowhere, gaming in Mississippi, and the Lottery, for the pari-mutuel industry generate revenues that mostly goes untaxed and unregulated by the state.

It is also apparent that Floridians and its tourists enjoy gambling. The estimates for Cruises to Nowhere patrons were 4.5 million for 2002, estimates for Floridians gambling in Mississippi were over 1.1 million for Fiscal Year 2003-04, and revenue estimates for Indian Gaming show that Florida tribal casinos along with casinos in Alabama, Connecticut, Louisiana, Mississippi, North Carolina and New York, are generating revenues of over \$4 billion for Fiscal Year 2003.

The pari-mutuel industry has made strides in maintaining a presence in Florida. The introduction of simulcast wagering and cardroom pot increases has attributed to increase in revenues for the tracks and frontons. However, attendance and tax revenues have continued to decline. Part of the decline in tax revenues can be attributed to the tax breaks received from the Florida Legislature in 2000. This apparently has been of benefit to the thoroughbred and harness industries which have seen a 63 percent and 88 percent (respectively) increase in handle since Fiscal Year 1987-88. However, the dogtracks and jai alai frontons have experienced a 52 percent and a 78 percent (respectively) decrease in handle since Fiscal Year 1987-88. The decline in attendance and revenue has also been attributed to competition in the marketplace.

Recommendations from OPPAGA to improve the revenues to the pari-mutuel industry, along with the industry's desire, have been to add video lottery terminals to the facilities. With the passage of Amendment 4, this is a pending issue in the Miami-Dade and Broward pari-mutuel facilities. The low estimate for tax collections for the first year of operation (2005-06) is \$87.9 million, \$247 million by year three and \$414.8 million by year six.. The high estimate is \$175 million the first year, \$606.1 million for year three, and 1.01 billion by year

If legislation were passed to allow these slot machines (or video lottery terminals) in all of the 27 pari-mutuel facilities, the third year slot machine tax revenues would be \$1.0 billion and \$2.3 billion. Though these tax revenues would be offset by loses of between \$115 million and \$170 million in sales tax revenues, and between \$145 million and \$215 million in Lottery proceeds, resulting in a net increase in all revenues between \$700 million and \$2.0 billion. It is highly unlikely, that these revenue levels could be achieved due to differences in tourism

levels and demographic characteristics between Miami-Dade and Broward counties and the rest of the state, and due to competition between the Miami-Dade and Broward facilities and those elsewhere in the state. Authorizing additional games will bring in sufficient additional revenue to allow the Legislature to make policy decisions regarding what type of gaming that should be played in Florida.

The Lotteries' challenges include similar competition in the marketplace and its need to create new games or change on-line game prize payouts, explore other game options, increase the number of retailers as well as the quality of the retailers' lottery product, and increase its advertising. The Lottery also faces possible competition from the authorization of slot machines in Miami-Dade and Broward counties.

Recommendations

If the Legislature wants to address the apparent disparity in gambling opportunities between the legalized and taxed pari-mutuel industry and other non-taxed competition, then it should allow video lottery terminals in all pari-mutuel facilities.

Considering the lack of revenue received from gaming revenues on Cruises to Nowhere and in light of the pending cases in Florida's Supreme Court that could drastically reduce the tax revenues Florida currently receives, a possible source of revenue could be generated by a departure fee for patrons on cruise ships including Cruises to Nowhere.

Appendix

Appendix I - Cardroom Revenues

Cardroom Revenue FY 2003/2004

Facility Name	Initial # of Tables	# of Tables Added	Initial Table Fees	Additional Table Fees	Total # of Tables	Total Revenue
Tampa Greyhound Track	12	2	\$6,500	\$1,000	14	\$7,500
**Bayard Raceways	30	6	\$15,500	\$18,500	36	\$34,000
**Calder/Tropical	12	0	\$6,500	\$6,500	12	\$13,000
**Jefferson County Kennel Club	10	4	\$5,500	\$6,500	14	\$12,000
Naples-Ft. Myers Greyhound	15	9	\$8,000	\$4,500	24	\$12,500
*Dania/Summersport Jai-Alai	17	0	\$9,000	\$9,000	17	\$18,000
Daytona Beach Kennel Club	16	6	\$8,500	\$3,000	22	\$11,500
Hollywood/BET Miami @ Hlywd	4	16	\$2,500	\$8,000	20	\$10,500
Palm Beach Kennel Club	21	8	\$11,000	\$4,000	29	\$15,000
Miami/Summer Jai-Alai	16	0	\$8,500	\$0	16	\$8,500
*Pompano Park	12	3	\$6,500	\$8,000	15	\$14,500
St. Petersburg Kennel Club	16	11	\$8,500	\$5,500	27	\$14,000
**Tampa Bay Downs	14	0	\$7,500	\$7,500	14	\$15,000
Washington Co. Kennel Club	6	14	\$3,500	\$7,000	20	\$10,500
West Flagler/BET Miami @ Flagler	10	0	\$5,500	\$0	10	\$5,500
TOTAL	211	79	\$113,000	\$89,000	290	\$202,000

Revised 7/14/04

* Re-opened in 2003

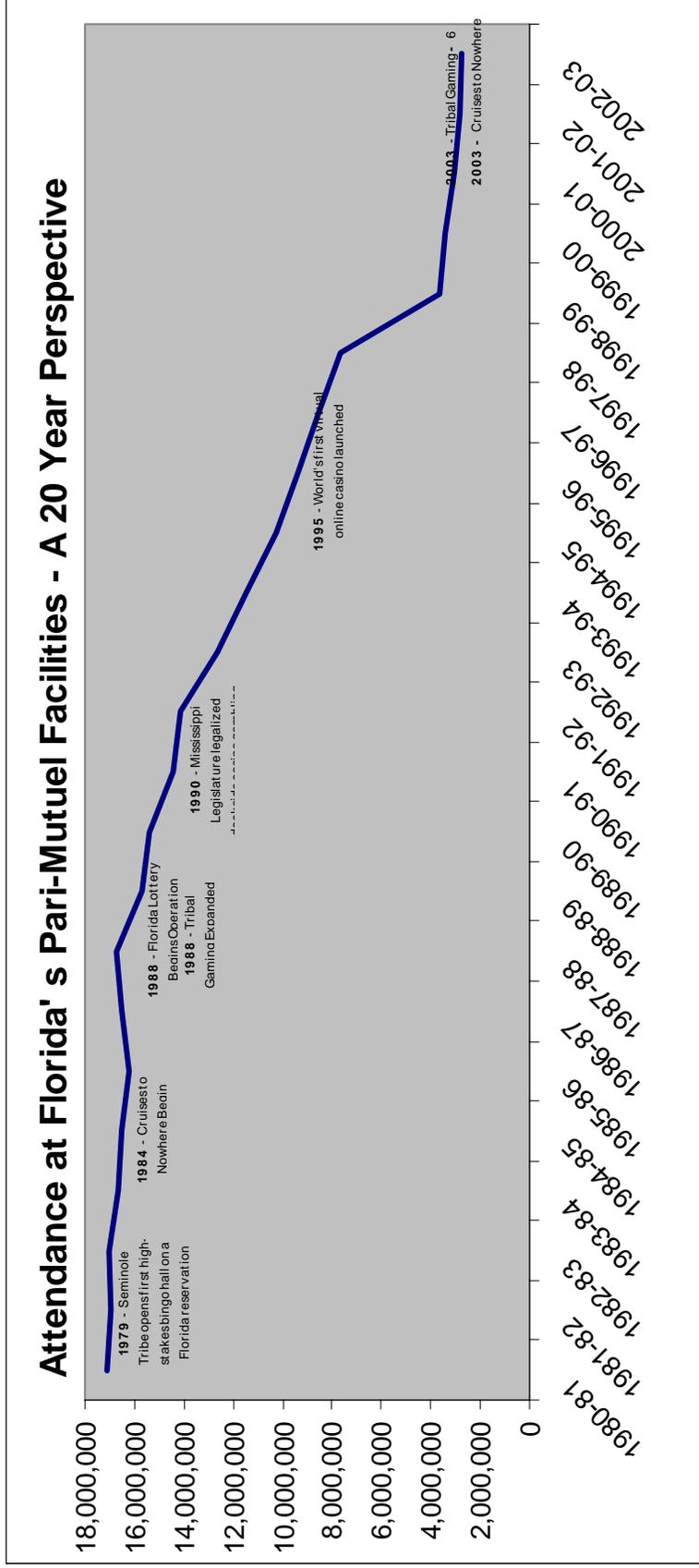
** New Cardroom

Cardroom Revenue FY 2004/2005

Facility Name	Initial # of Tables	# of Tables Added	Initial Table Fees	Additional Table Fees	Total # of Tables	Total Revenue
Tampa Greyhound Track	12	0	\$6,500	\$0	12	\$6,500
Bayard Raceways	30	10	\$15,500	\$5,000	40	\$20,500
Calder/Tropical	10	0	\$5,500	\$0	10	\$5,500
Jefferson County Kennel Club	15	7	\$8,000	\$3,500	22	\$11,500
Naples-Ft. Myers Greyhound	24	0	\$12,500	\$0	24	\$12,500
Dania/Summersport Jai-Alai	17	0	\$9,000	\$0	17	\$9,000
Daytona Beach Kennel Club	22	0	\$11,500	\$0	22	\$11,500
Hollywood/BET Miami @ Hlywd	30	0	\$15,500	\$0	30	\$15,500
Palm Beach Kennel Club	29	0	\$15,000	\$0	29	\$15,000
Miami/Summer Jai-Alai	16	0	\$8,500	\$0	16	\$8,500
Pompano Park	12	7	\$6,500	\$3,500	19	\$10,000
St. Petersburg Kennel Club	25	20	\$13,000	\$10,000	45	\$23,000
Tampa Bay Downs	14	0	\$7,500	\$0	14	\$7,500
Washington Co. Kennel Club	14	6	\$7,500	\$3,000	20	\$10,500
West Flagler/BET Miami @ Flagler	10	0	\$5,500	\$0	10	\$5,500
TOTAL	280	50	\$147,500	\$25,000	330	\$172,500

Revised 10/28/04

Appendix 2 - Attendance at Florida's Pari-Mutuel Facilities



Source: Florida Division of Pari-Mutuel Wagering; *Cruises to Nowhere*, Florida Senate Committee on Finance and Taxation, November 2003; *Gambling on the Internet*, Cynthia R. Janower, 1996; Mississippi Gambling Laws, Gambling-Law-US.com, 2003; and *In Seminole Gambling, a Few are Big Winners*, St. Petersburg Times, 1998.

Note: The significant drop in attendance between Fiscal Years 1997-98 and 1998-99 is due to the division no longer tracking unpaid attendance because of the enactment of Ch. 98-190, *Laws of Florida*.

Appendix 3 – Pari-Mutuel Survey

Jefferson County Kennel Club, Inc.	R-1
Palm Beach Kennel Club	R-2
Washington Kennel Club (EBRO)	R-3
Sarasota Kennel Club	R-4
Pompano Park Racing	R-5
Dania Jai Alai	R-6
Hollywood Greyhound Track	R-7
Calder Race Course	R-8
Tropical Park	R-9
Derby Lane	R-10
Pensacola Greyhound Track	R-11
Tampa Bay Downs	R-12
Jacksonville Kennel Club	R-13
Orange Park Kennel Club	R-14
Bayard Kennel Club	R-15
Gulfstream Park	R-16
Ocala Jai Alai	R-17

Senate Regulated Industries Committee

2004 Pari-Mutuel Survey

Results

1. Please select the most appropriate statement regarding changes in attendance, handle, and profitability at your pari-mutuel facility for the period 1999 through 2004.

Attendance	N	%
Has increased	0	0.0%
Has remained the same	1	5.9%
Has decreased	16	94.1%
Total	17	100.0%

Handle	N	%
Has increased	0	0.0%
Has remained the same	1	5.9%
Has decreased	16	94.1%
Total	17	100.0%

Profitability	N	%
Has increased	0	0.0%
Has remained the same	6	35.3%

**Senate Regulated Industries Committee
2004 Pari-Mutuel Survey**

		Results
Has decreased	11	64.7%
Total	17	100.0%

2. To what extent do you attribute any changes noted above?

Changes in attendance

	N marking	%
a. Lottery	10	58.8%
b. Economy	10	58.8%
c. Casino ship gambling	15	88.2%
d. Indian gaming	11	64.7%
e. Bingo	8	47.1%
f. Competition from other entertainment	13	76.5%
g. Taxes	5	29.4%
h. Inability to expand technology	12	70.6%
i. Other--simulcast	1	5.9%
Other--Internet gaming	1	5.9%
Other--Adult arcades	1	5.9%
Other--MS casinos	3	17.6%
Other--Not specified	1	5.9%

Changes in handle

	N marking	%
a. Lottery	14	82.4%
b. Economy	10	58.8%
c. Casino ship gambling	15	88.2%
d. Indian gaming	9	52.9%
e. Bingo	10	58.8%
f. Competition from other entertainment	10	58.8%
g. Taxes	8	47.1%
h. Inability to expand technology	10	58.8%
i. Other--simulcast	1	5.9%
Other--Internet gaming	1	5.9%
Other--Adult arcades	1	5.9%
Other--MS casinos	3	17.6%
Other--Not specified	1	5.9%

**Senate Regulated Industries Committee
2004 Pari-Mutuel Survey
Results**

Changes in Profitability

	N marking	% marking
a. Lottery	14	82.4%
b. Economy	10	58.8%
c. Casino ship gambling	15	88.2%
d. Indian gaming	9	52.9%
e. Bingo	10	58.8%
f. Competition from other entertainment	10	58.8%
g. Taxes	8	47.1%
h. Inability to expand technology	10	58.8%
i. Other--simulcast	1	5.9%
Other--Internet gaming	1	5.9%
Other--Adult arcades	1	5.9%
Other--MS casinos	3	17.6%
Other--Not specified	1	5.9%

3. Have the following gaming industries impacted your facility?

	Number of "Yes" responses	Percent with "Yes" responses
a. Jai alai	0	0.0%
b. Greyhound	5	29.4%
c. Harness	2	11.8%
d. Bingo	10	58.8%
e. Cruise ship casino	13	76.5%
f. Indian gaming	13	76.5%
g. Other --	11	64.7%

4. Have there been any legislative changes that have affected

Attendance	N	%
Yes—positively	3	17.6%
No	5	29.4%
Yes—negatively	6	35.3%
Yes--positively & negatively	3	17.6%
Total	17	100.0%

**Senate Regulated Industries Committee
2004 Pari-Mutuel Survey
Results**

Handle	N	%
Yes—positively	0	0.0%
No	10	58.8%
Yes—negatively	4	23.5%
Yes--positively & negatively	3	17.6%
Total	17	100.0%

Profitability	N	%
Yes—positively	5	29.4%
No	4	23.5%
Yes—negatively	5	29.4%
Yes--positively & negatively	3	17.6%
Total	17	100.0%

8. Are there other possible uses for your facility that are not directly related to pari-mutuel wagering?

	N	%
Yes	10	62.5%
No	6	37.5%
Total	16	100.0%

No response 1

If Yes, Do you utilize the facility for any of these other uses?

	N	%
Yes	10	100.0%
No	0	0.0%
Total	10	100.0%

9. Have you made any efforts to promote the races or games at your facility?

	N	%
Yes	12	100.0%
No	0	0.0%

**Senate Regulated Industries Committee
2004 Pari-Mutuel Survey
Results**

Total	12	100.0%
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10. Do yo support the expansion of gaming in Florida?

	N	%
Yes	17	100.0%
No	0	0.0%
Total	17	100.0%

**Senate Regulated Industries Committee
2004 Pari-Mutuel Survey
Open-Ended Responses**

3. Have any of the following gaming industries impacted your facility?

a. jai alai

R10 – Tampa Jai Alai’s closure in 1998 did not increase our attendance by any substantial amount.

b. greyhound

R4 – Yes. Tampa, St. Petersburg running year round

R5 – Yes - The Palm Beach Kennel Club is able to offer full-card daytime thoroughbred simulcasting, which we are not.

R7 – Yes – Simulcasting’s lower profitability

R11 – Yes, in as much as e operate as a “Guest Track” for Inter-Track Wagering with the “Host Tracks” from the Jacksonville Racing Circuit, we are relinquishing a significant portion of our wagering market to them and thereby accept a reduced profit level by “splitting the pie” so to speak. The patrons who actually wager into the simulcast pools benefit in that they have the opportunity to play into larger pools than they otherwise might, however, we as a facility see only modest benefit in the form of patron “goodwill”. Trying to discontinue simulcasting would be a public relations nightmare.

R12-- Granted substantial tax relief and favorable legislation that allows for year round operations of card rooms under certain circumstances. In the Tampa area this has increased greyhound tracks profitability affording them a competitive advantage in the area of advertising and promotion.

c. harness

- R4 – N/A
- R5 – Slot rich tracks from other states have taken many top horses, trainers, and drivers from Pompano Park.
- R7 – Yes – Simulcasting’s lower profitability. Profitability on harness simulcast is lower than greyhound simulcast which is lower than “live” racing.
- R11 – No. However, we also operate as a “Guest Track” for Inter-Track Wagering with the “Host Tracks” Miami Thoroughbred tracks, the split of the commission is greatly in the favor of the Horse track and there is very little left in the way of profitability for the “In-State non-horse guest sites”. Again, discontinuing this simulcasting would be very troublesome from a public relations standpoint.

d. bingo

- R2 - We have within a 10 mile radius of our location over 50 so called “Charity Bingo Halls”
- R3 – Yes, local & Indian Bingo have expanded greatly.
- R5 – Has split the “gambling pie” to the point where we have a smaller slice
- R7 – Yes – Less available wagering dollars and competition for leisure time. Attendance and Handle are affected.
- R10 – There are over 32 Charity Bingo Halls located within a 50 mile radius of our facility, with new halls opening very frequently has resulted in a negative impact on attendance and handle.
- R11 – There are six Bingo complexes within thirty minutes of our facility.
- R12 – Bingo, cruise ship casino and Indian gaming: There has been an explosion in growth of such activities, including an aggressive expansion of Indian gaming operations as well as an increased number of cruise ship casinos. Both businesses are largely unregulated, untaxed and offer very little public transparency, which is the complete opposite of pari-mutuel operating environment. As a result, pari-mutuels are faced with a competitive disadvantage while targeting basically the same customer base of the Indians and “cruises to nowhere”.
- R13 – Yes. Taken market share
- R14 – Yes. Taken market share
- R15 – Yes. Taken market share

e. cruise ship casino

- R2 - At the Port of Palm Beach in recent years there have been between 1 -3 cruise ships that on a daily basis go outside the 3 mile limit and offer slot machines and other gaming
- R4 – Takes entertainment dollars out of circulation, without paying taxes
- R5 – Has cannibalized our attendance and handle by offering more forms of gambling
- R6 – 5 minutes away. Unregulated, untaxed Floating casino
- R7 – Yes – See “Bingo” above.
- R8&9 – Loss of potential dollars, customers and profitability. Also, economic loss to the state of Florida due to loss of tax dollars on wagers.
- R10 – Presently, our beaches house two casino cruise ships: SunCruz & Majesty. The Crown Jewel that will operate out of the Port of St. Petersburg is set to open any day now and we foresee a negative effect due to the close proximity.
- R11 – We have no cruise ship casinos at this point in time.
- R13 – Yes. Taken market share
- R14 – Yes. Taken market share
- R15 – Yes. Taken market share
- R17 – They offer more types of wagering that are more popular to the public (slots, poker, blackjack, etc.) They also allow smoking during gaming hours.

f. Indian gaming

- R2 – The Seminole Tribe’s expansion with a new gaming hall in Coconut Creek as well as their new venture with Hard Rock Casino in Ft. Lauderdale
- R3 – Yes, Indian gaming in Atmore, AL, and Montgomery, AL offer high stakes bingo and VLT’s. We draw from a common market.
- R4 – Takes entertainment dollars out of circulation without paying taxes
- R5 – Same as above
- R6 – 8 minutes away. Offer gaming (electronics, machines) that are popular with the public in this electronic ge. Offer poker with jackpots which is presently prohibited by the Division of Pari-mutuel Wagering; offer a form of poker tournaments also prohibited by the Division. State licensed and regulated pari-mutuel can’t compete with Federally-allowed gaming.
- R7 – Yes – See “Bingo above.

- R8&9 – Loss of potential wagering dollars, customers and profitability. Also, our card room operations are affected adversely. Seminole Hard Rock Casino is located within six miles of our facility. The state of Florida receives no economic benefit due to no taxation of gambling dollars at Indian gaming facilities.
- R10 – The opening of the new Seminole Hard Rock Casino in Tampa has resulted in a negative impact on handle, attendance, and profitability.
- R11 - We have a “High Stakes: Indian gaming facility within a one hour drive located in Atmore.
- R16 – The Hard Rock hotel and Casino has opened in Hollywood Florida. This was subsequent to our 2004 race meet. The impact will be quantified during our 2005 race meet.
- R17 – Having poker, V.L.T’s, no restrictions on smoking etc...have attracted many of my Jai Alai customers to the Tampa Casino.
- g. Other
- R1— Casinos in Biloxi, Mississippi
- R2 – Our business has been negatively impacted by Internet Wagering, Grey market slot machines in Florida and the expansion of gaming in other states in the U.S. as well as the Caribbean.
- R3 – Biloxi & Gulfport MISS, full casino gaming, including poker rooms no cap on tournament buy-ins/no cap on betting limits
- R4 – Lottery same as above
- R5 – Adult arcades – These illegal store front operations have also diverted gambling dollars from our facility.
- R6 – Internet gaming
- R7 – Thoroughbred – Yes – Simulcasting’s lower profitability. Profitability on Thoroughbred is the lowest for all forms of simulcasting.
- R10 – Our business has been negatively impacted by Internet Gambling, Grey market slot machines in Florida, and the expansion of gaming opportunities in other states in the U.S. and the Caribbean. The inexpensive cost of air-travel and the multitude of flights to Las Vegas, Mississippi, and the Caribbean have provided opportunities for Florida residents in lieu of attending facilities in-state as well as decreasing the attractiveness of certain visitors to the state of Florida. All of the above listed factors have also attributed to a statewide decline in inter-track wagering.
- R11 – We have to contend with various professional sports venues such as Hockey, Baseball, etc.
- R12 – In general, there has been an expansion of gaming opportunities throughout the United States and the Caribbean providing opportunities for Florida residents in lieu of attending facilities in

state. Relating to the expansion throughout the United States is the growing trend by states to authorize and implement alternative gaming at racetracks. This marriage has resulted in greatly increased purses at out-of-state tracks, putting Florida horse traces at a competitive disadvantage in terms of attracting quality horses to compete in state.

R17 – With account wagering, internet wagering, becoming more popular, handle and attendance will continue to decline along with a decline in revenues from concessions, bars, restaurant, programs sales, etc....(all depts.).

4. Have there been any legislative changes that you believe have affected attendance, handle or profitability of your facility? If so, please describe the impact of these changes.

R17 – The Non Smoking Amendment

a. Attendance

R4 – too much simulcast wagering

R6 – Attendance and profits have been favorably affected by the 2003 revisions to the cardroom statutes (HB 1059); however, the rules adopted by the Division of pari-mutuel Wagering have severely curtailed out ability to copete with the Indian cardrooms. These rules are being challenged.

R7 – Yes – New “No Smoking” Law

R10 – New card room legislation has resulted in a modest increase in attendance.

R11 – Attendance, Handle and Profits: The “sunset” of the Pari-Muteul statues in 1992 and associated tax exemptions for smaller facilities made it nearly impossible to operate profitably with a year round schedule. Consequently, the number of performances had to be reduced which led to significantly lower attendance and handle figures. Payment of the full tax rate on the first dollar of handle removed all profitability except for only the larger handle performances. The restoration of some portion of the tax credits and exemptions in 1996 helped, but with the continued loss of market to other gaming venues, it is simply insignificant.

R12 – Attendance, Handle, and Profit: The indoor smoking ban that became effective on July 1, 2003 negatively affected all three areas. Since the ban was not universally applied (the Indians and Cruise ships are exempt from enforcement) we once again are faced with operating in very competitive environment at a disadvantage. Please refer to 3b above for legislative changes to the greyhound industry that also has had a negative impact n all three categories.

R13 – The lottery caused a decrease in attendance, handle and profitability

R14 – The lottery caused a decrease in attendance, handle and profitability

R15 – The lottery caused a decrease in attendance, handle and profitability

- R17 – The majority of our customers are smokers. If they can't smoke and wager there they find other venues when they are allowed to smoke via acct. wagering, etc.
- b. Handle
- R4 – Same as above
- R7 – Yes – New “No Smoking” Law
- R13 – The lowering of pari-mutuel taxes has helped make up for losses in profitability
- R14 – The lowering of pari-mutuel taxes has helped make up for losses in profitability
- R15 – The lowering of pari-mutuel taxes has helped make up for losses in profitability
- R17 – Per capita, if less people are wagering, the lower the handle will be.
- c. Profits
- R1— Yes-The Florida pari-mutuel tax credit as enacted has been vital to the existence of JCKC. Without the tax credit, we would not have been able to operate this track.
- R2 - Tax Reduction and Card Room changes have led to a very modest increase in revenues in these areas. But those increases have not been able to compensate for the general decline in on-track wagering.
- R4 – Rising cost in labor, insurance, taxes with limited amount of profit in our of state simulcast
- R7 – Yes – New “No Smoking” Law. Lower profits follow from lower attendance & lower handle.
- R10 – Card-room legislation and Tax Reduction has caused a very moderate increase in our revenue although not enough to substantiate the decline in on-track and inter-track wagering.
- R13 – Poker room expansion has increased attendance, handle and profitability
- R14 – Poker room expansion has increased attendance, handle and profitability
- R15 – Poker room expansion has increased attendance, handle and profitability
- R17 – Profits are based on handle, if the handle is down. Profits are down. (See attached)
5. Has any legislation been proposed, but not passed, which you believe would have impacted your attendance, handle, or profitability? What were the specific proposals? What do you believe the impact of such proposals would have been?
- R1— Yes – VLT's. VLT's would greatly increase attendance and profits for JCKC and the State of Florida. Greyhound racing has steadily declined over the years and VLT's would boost the economy of the whole industry.

- R2 - VLT Legislation that was proposed but never passed would positively have impacted all three areas.
- R3 – VLT’s
- R4 – Card Rooms a plus
- R6 – VLT’s. significant revenues to the state, more employment and tourist alternatives and state regulated games to protect the public.
- R7 – Racinos – long term profitability for racetrack owners & operators & kennel operators & concession operators. New jobs & better paid jobs. Large sums of tax dollars created for education!!.
- R8&9 – Approval of alternative gaming at existing pari-mutuel facilities in the form of video lottery terminals. A chance to double purses for horsemen, create new jobs, become more profitable.
- R10 – We have proposed legislation for VLT’s at licensed pari-mutuel facility for many years which has never passed. If VLT’s were permitted this would result in a positive impact on handle, attendance, and profitability as well as state tax revenue.
- R11 – Video Lottery legislation such as the 2003 Senate Bill sb1920 would have placed all pari-mutuel facilities in a much stronger position to compete with the other gaming venues. Slot machine legislation would be ideal in placing pari-mutuel facilities on an equal footing with other gaming venues. The assured increased attendance that machine gaming would bring would allow for the most likely scenario to allow continued “live” greyhound and horse racing and Jai Alai. Attendance, potentially handle, definitely wagering, purses, tax revenues and profitability would dramatically improve.
- R12 – Video Lottery Terminal (VLT) legislation has been proposed for many years which if passed would have significantly improve attendance, handle, and profitability as well as state tax revenue. Additionally, year round operation of card rooms has been proposed which to a lesser extent would also have a positive impact on all three categories.
- R13 –
- The Video Lottery Terminals would increase attendance, handle and profitability.
 - Restricting Cruises to Nowhere would increase attendance, handle and profitability.
 - Deregulating market area protection would hurt attendance, handle and profitability.
 - Off track/telephonic betting would hurt attendance, handle and profitability.
- R14 –
- The Video Lottery Terminals would increase attendance, handle and profitability.
 - Restricting Cruises to Nowhere would increase attendance, handle and profitability
 - Deregulating market area protection would hurt attendance, handle and profitability.
 - Off track/telephonic betting would hurt attendance, handle and profitability.
- R15 -
- The Video Lottery Terminals would increase attendance, handle and profitability.
 - Restricting Cruises to Nowhere would increase attendance, handle and profitability.
 - Deregulating market area protection would hurt attendance, handle and profitability.

d. Off track/telephonic betting would hurt attendance, handle and profitability.

R17 – Video Lottery Terminals (See attached)

6. What measures could the Legislature enact to help improve profitability of pari-mutuel facilities? Do not limit your response to things directly relating to pari-mutuel wagering but please consider other possible areas as well.

R1 - Other forms of wagering such as slot machines and other casino type wagering.

R2 - VLT Legislation if passed and a refinement of the tax structure

R3 – VLT’s at all pari-mutuel permit holders/relaxed poker laws

R4 – Need to be able to compete with cruise ships and Indians. Only way to compete is video Lottery machines

R5 – Removing all restrictive simulcasting legislation and allowing poker during simulcasting hours

R6 – See answers to questions 5 and 7.

R7 – Racinos first and foremost!!! “No pot limits” on poker and no restrictions on poker jackpots or tournaments!!!

R8&9 – See #5 above: legalize account wagering in Florida; police account wagering if not legal in Florida; would allow Florida pari-mutuels to be competitive with those states that have alterative gaming.

R10 – Approve VLT’s or Slot Machines at pari-muteuls, as well as other forms of gaming.

R11 – See item #5 above. Additional, consider removing the requirement for the majority vote of approval by the count commission regarding card room operation authorization. Consider increasing the credits and exemptions amount for smaller pari-mutuel facilities and allow for the sale of those credits and exemptions to more than one simulcasting partner in order to assure complete usage of such credits and exemptions.

R12 – Please refer to our response to question 5.

R13 – a. Equalization of the tax rate among pari-mutuel industries.
b. Allow expended product like Video Lottery Terminals.
c.. Require minimum contribution per facility to cover cost of regulation.

R-14 - a. Equalization of the tax rate among pari-mutuel industries.
b. Allow expended product like Video Lottery Terminals.
c. Require minimum contribution per facility to cover cost of regulation.

R16 - 1. Regulatory parity in terms of simulcasting and operating hours for horse tracks.

2. Account wagering
3. Establishment of an Off Track Betting network
4. Parity in terms if gaming products across the state, allow gaming which is currently legal in Florida to be conducted by all pari-mutuel facilities

R17 – Enact legislation for pari-mutuels regarding smoking. (Exemption).

7. Do you believe your profit could be improved by the authorization of additional forms of gaming or other products at pari-mutuel facilities? If so, what forms of new gaming or products would you suggest?

R1— Yes – Slot machines and other casino type wagering which the residents of Florida now go to other states in order to participate.

R2 - See # 6

R3 – Yes, VLT's, relaxed poker laws

R4 – Video lottery terminals change Card Room provision that needs county approval

R5 – Yes – slot machines

R6 – Yes. The same gaming that is already in the market place offered by Indian casinos in order to create a level playing field which would provide additional state revenues and the protection of regulated gaming for the public.

R7 – Racinos & unrestricted poker!!!!

R8&9 – yes. slot machines and account wagering

R10 – Please see number #6

R11 – See item #5 above.

R12 – Please refer to our response to question 5.

R13 – a. Yes. Video Lottery Terminals.

R14 – a. Yes. Video Lottery Terminals.

R15 – a. Yes. Video lottery Terminals.

R16 – Yes, but only if introduced into a reformed regulatory environment which allowed free market principles to invite new investment and capital to compete for the customer. If the marketplace was open to allow flexibility in locating facilities and the legislature removed artificial regulatory barriers which create disincentives to new investment and capital, the consumers could seek out and reward those operators which offer the gaming environment they most desire. Gulfstream would suggest allowing pari-mutuels the same access to gaming which is presently legal and operating in Florida.

R17 – Video Lottery (V.L.T's) would allow us to compete with other gaming venues in Florida that already offer this product.

8. Are there other possible uses for your facility which are not directly related to pari-mutuel wagering?

_____ Yes -> Do you utilize the facility for any of these other uses?

_____ Yes Please describe:

R1— Division of Pari-Mutuel Wagering Cardroom Operation

R5 – Broward Co. Fair; Ride & Drive events; storage of new vehicles for auto dealers

R7 – Yes, conventions, private parties, billiards, flea market, concerts, retail shopping, car auctions, circus, fairs, haunted house

R8&9 – off-season events as parking lot ride-and-drives, commercial exhibitions such as craft fairs, thoroughbred horse auctions

R12 – Concerts, trade shows, facility rental and golf driving range

R16 – Yes. We have utilized Gulfstream Park for corporate ride and drives, short term parking needs, and concert.

_____ No Please describe:

R2 – We operate 364 days per year

R4 – Only for parking for non profit groups

R6 – It's a single purpose facility.

R10 – Our facility is over 364 days a year.

R11 – No.

R13 – a. Yes. Car sales, civic and charitable events.

R14 - a. Yes. Car sales, civic and charitable events.

R15 - a. Yes. Car sales, civic and charitable events.

9..Have you made any efforts to promote the races or games at your facility?

_____ Yes -> Please describe:

R1— Advertising in television, newspapers and radio and many in-house promotions.

R2 – We have tried to promote our business as much as possible with an advertising and promotion budget of over one million dollars.

- R3 – 250,000 Ad Budget
 - R4 – Doubled our advertising and marketing
 - R5 – Converts, Group Sales, Giveaways, Adv., Promotions, Food & Bev. Discounts. Etc.
 - R6 – Advertising in all media, promotions and special events
 - R7 – TV, newspaper, radio
 - R8&9 – annual marketing budget of \$4 million dollars featuring direct mail, print ads, radio and television ads
 - R10 – We have tried to promote our facility as much as possible with an advertising and promotion budget exceeding one million dollars.
 - R11 – Yes, we have spent a hundred thousand dollars or more annually, on marketing and promotions in spite of the fact that we are operating at a loss.
 - R12 – Annual expenditures of approximately \$750,000 on advertising and promotion to promote racing at our facility. We also have an annual reinvestment strategy that has averaged 1 million per year in capital expenditures for the past eight years.
 - R13 – a. Yes. All forms of print and electronic media, including prizes and giveaways.
 - R14 - a. Yes. All forms of print and electronic media, including prizes and giveaways.
 - R15 - a. Yes. All forms of print and electronic media, including prizes and giveaways.
 - R16 – Yes. Per the last 5 years, Gulfstream Park has spent close to ten million dollars advertising, marketing, and promoting thoroughbred horse racing at our facility. Monies have been spent primarily on television, radio, print, and outdoor advertising
 - R17 – Advertising in all forms of media (newspaper, radio, television, etc..)
10. Do you support the expansion of gaming in Florida ?
_____ Yes -> Why?
- R1— The people of Florida want to be allowed the opportunity
 - R2 – As long as it is done equitably for all pari-mutuel facilities in the State of Florida and is limited to only licensed pari-mutuel
 - R3 – Limited to permit holders, increase state rev./jobs to keep/gaming dollars in state tax and regulated
 - R4 – Create more tax revenue, let our facility be competitive

- R5 – It is necessary for the industry to survive and prosper
- R6 – In existing state licensed pari-mutuel facilities that provide employment, state revenues and local area economic benefit that will be lost unless these facilities are permitted to offer the public the same gaming products offered by Federally sanctioned gaming facilities (ie Indian gaming and cruise ship “boats to nowhere) in their geographic areas.
- R7 – Without expansion our industry will die in a few years!
- R8&9 – To hopefully expand company profitability, maintain an excellent racing program, remain competitive with racing jurisdictions where alternative gaming exists.
- R10 – As long as it done equitably for all pari-mutuels facilities in the State and is limited to only licensed pari-mutuels.
- R11 – yes. See item #5 above. The recovery of Florida wagering dollars currently going to the state of Mississippi will be tremendous, not to mention bringing wagering dollars from the immediately adjacent states of Alabama and Georgia which would also be significant.
- R12 – Yes, at existing pari-mutuel facilities in order to effectively compete with the untaxed and unregulated businesses that already exist in Florida (see 3d-f.) Enacting VLT legislation for existing pari-mutuel facilities would enable us to effectively compete on a level playing field as well as increase state revenue.

_____ No -> Why not?

- R13 – a. No. We would support expanded product at existing locations.
- R14 - a. No. We would support expanded product at existing locations.
- R15 - a. No. We would support expanded product at existing locations.
- R17 – Attached.

ADDITIONAL COMMENTS:

- R1— to participate in all gaming activities under the rules and regulations of the Division of Pari-Mutuel Wagering and Jefferson County Kennel Club would like to provide these types of gaming for them.
- R5 – The inability to open our Poker Room when we are accepting wagers (as opposed to racing live) has put us at a serious competitive disadvantage with the Indians, Jai-Alai and the Palm Beach kennel Club. Also Full-Card Thorough Bred simulcasting in So. Florida.
- R7 – Florida already has casinos in the form of “casino ship gambling” and “Indian gaming” all of which is UNREGULATED & UNTAXED!

Don't Floridians and our tourists deserve a form of entertainment that is honest, which only regulation can provide?

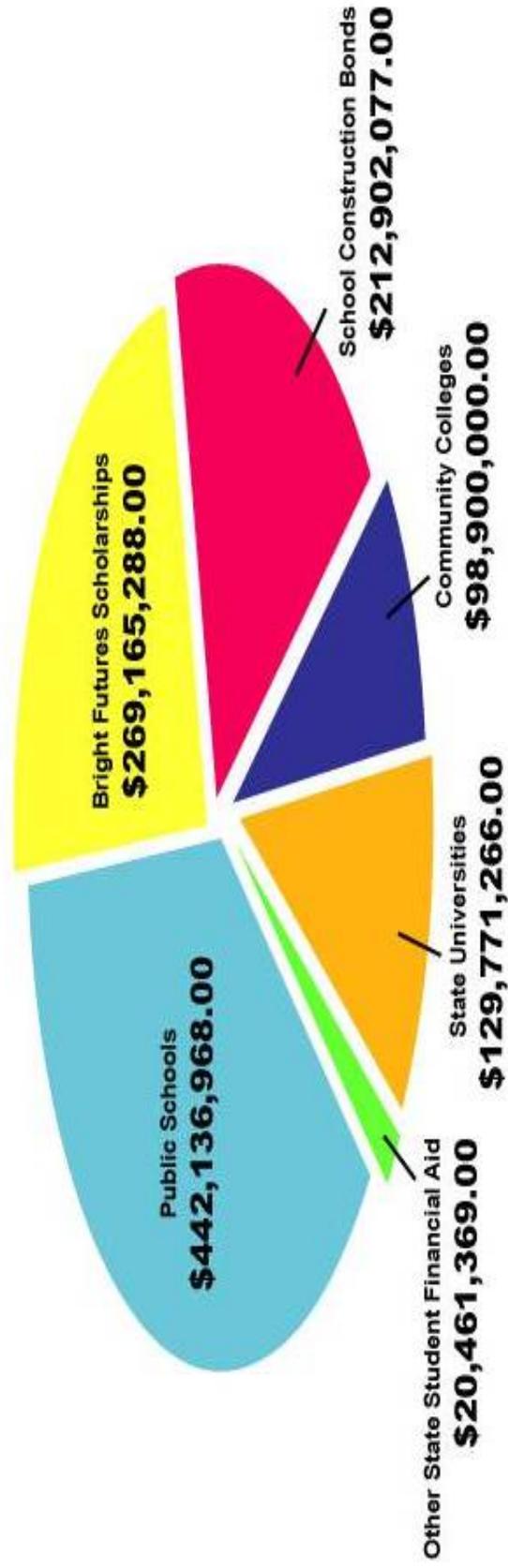
Don't our children and our teachers deserve the benefits provided by large amounts of additional tax dollars earmarked for education?

R11 – Again, please excuse the lack of timely submission. Hurricane “Ivan” has had a significant impact on our area and our facility.

Appendix 4 – Lottery Appropriations



Educational Enhancement Trust Fund 2004-2005 Appropriations *



*Appropriated amounts shown above represent projected expenditures.

Appendix 5 – Indian Gaming Revenues

National Indian Gaming Commission Tribal Gaming Revenues (in thousands) by Region Fiscal Year 2003 and 2002

	Fiscal Year 2003		Fiscal Year 2002		Increase (decrease)	
	Number of	Gaming	Number of	Gaming	Number of	Gaming
	Operations	Revenues	Operations	Revenues	Operations	Revenues
Region I	43	1,439,516	47	1,230,194	(4)	209,322
Region II	54	4,699,889	51	3,678,095	3	1,021,794
Region III	43	1,898,522	40	1,782,874	3	115,648
Region IV	91	3,547,360	109	3,537,227	(18)	10,133
Region V	75	822,727	79	651,841	(4)	170,886
Region VI	24	4,322,134	22	3,835,825	2	486,309
Totals	330	16,730,148	348	14,716,056	(18)	2,014,092

Compiled from gaming operation audit reports received and entered by the NIGC through June 30, 2004.

Region I	Alaska, Idaho, Oregon, and Washington.
Region II	California, Northern Nevada.
Region III	Arizona, Colorado, New Mexico, and Southern Nevada.
Region IV	Iowa, Michigan, Minnesota, Montana, North Dakota, Nebraska, South Dakota, and Wisconsin
Region V	Kansas, Oklahoma, and Texas.
Region VI	Alabama, Connecticut, Florida, Louisiana, Mississippi, North Carolina and New York.

National Indian Gaming Commission Tribal Gaming Revenues

Gaming Revenue Range	Number of Operations	Revenues (in thousands)	Percentage of		Mean (in thousands)	Median (in thousands)
			Operations	Revenues		
Gaming operations with fiscal years ending in 2003						
\$100 million and over	43	10,714,581	13%	64%	249,176	184,332
\$50 million to \$100 million	35	2,459,698	11%	15%	70,277	65,416
\$25 million to \$50 million	55	1,984,673	17%	12%	36,085	37,029
\$10 million to \$25 million	67	1,144,779	20%	7%	17,086	16,894
\$3 million to \$10 million	57	350,398	17%	2%	6,147	5,819
Under \$3 million	73	76,019	22%	0%	1,041	833
Total	330	16,730,148				
Gaming operations with fiscal years ending in 2002						
\$100 million and over	41	9,510,660	12%	65%	231,967	179,101
\$50 million to \$100 million	24	1,694,606	7%	12%	70,609	65,577
\$25 million to \$50 million	55	1,978,519	16%	13%	35,976	38,984
\$10 million to \$25 million	65	1,067,513	19%	7%	16,423	16,570
\$3 million to \$10 million	63	386,399	18%	3%	6,133	5,373
Under \$3 million	100	78,359	29%	1%	784	461
Total	348	14,716,056				
Gaming operations with fiscal years ending in 2001						
\$100 million and over	39	8,398,523	12%	65%	215,347	158,836
\$50 million to \$100 million	19	1,415,755	6%	11%	74,513	79,083
\$25 million to \$50 million	43	1,528,611	13%	12%	35,549	34,264
\$10 million to \$25 million	58	997,546	18%	8%	17,199	16,328
\$3 million to \$10 million	57	385,654	17%	3%	6,766	7,292
Under \$3 million	114	96,257	35%	1%	844	575
Total	330	12,822,346				
Gaming operations with fiscal years ending in 2000						
\$100 million and over	31	6,606,284	10%	60%	213,106	141,684
\$50 million to \$100 million	24	1,693,510	8%	15%	70,563	73,314
\$25 million to \$50 million	41	1,360,777	13%	12%	33,190	29,944
\$10 million to \$25 million	50	856,464	16%	8%	17,129	17,335
\$3 million to \$10 million	55	350,110	18%	3%	6,366	6,250
Under \$3 million	110	91,545	35%	1%	832	541
Total	311	10,958,690				
Gaming operations with fiscal years ending in 1999						
\$100 million and over	28	5,845,787	9%	60%	208,778	136,897
\$50 million to \$100 million	19	1,323,995	6%	14%	69,684	70,412
\$25 million to \$50 million	33	1,193,049	11%	12%	36,153	35,990
\$10 million to \$25 million	59	1,028,834	19%	10%	17,438	17,562
\$3 million to \$10 million	54	322,268	17%	3%	5,968	5,764

Compiled from gaming operation audit reports received and entered by the NIGC through June 30, 2004.

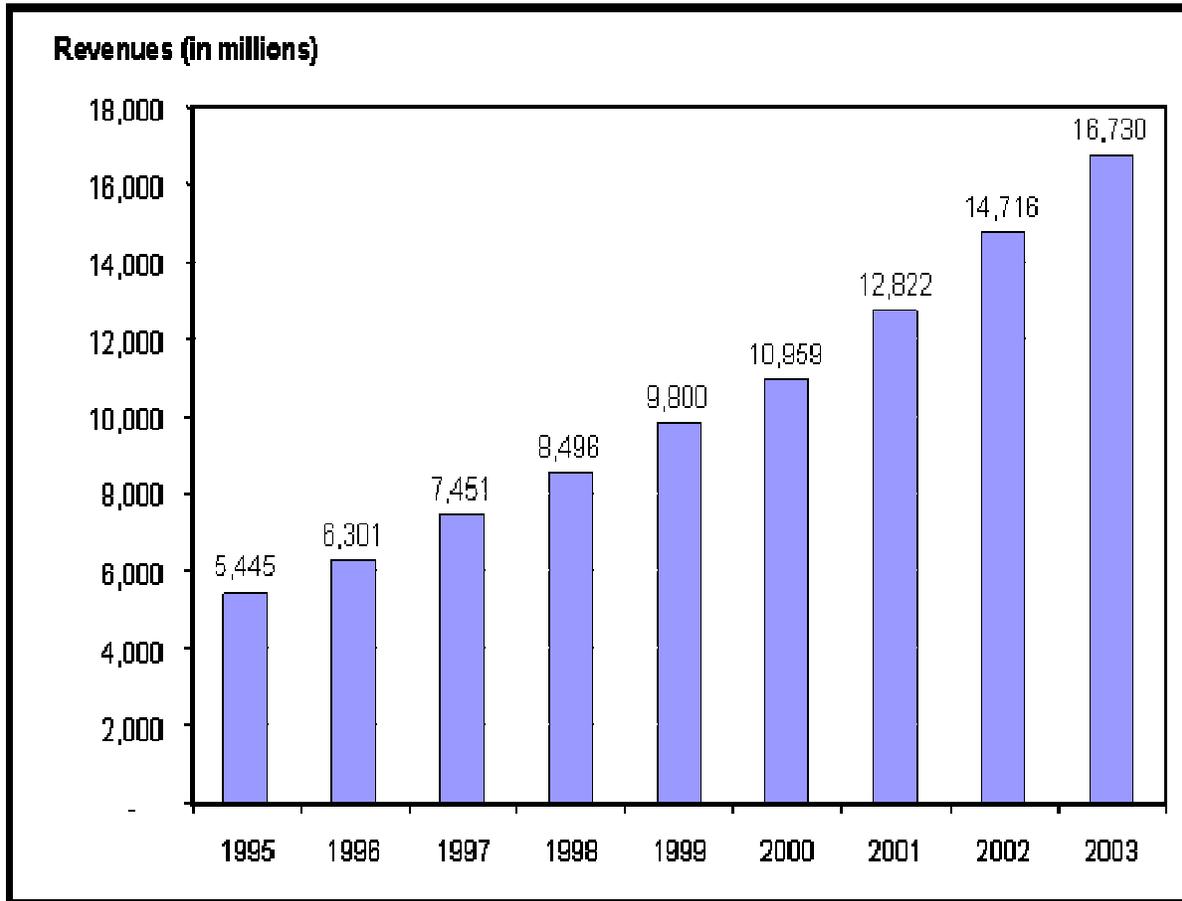
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Growth in Indian Gaming

Source: National Indian Gaming Commission



The NIGC is an independent regulatory agency established within the Department of the Interior pursuant to the Indian Gaming Regulatory Act of 1988.