

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Jones, Chair
Senator Sachs, Vice Chair

MEETING DATE: Tuesday, January 11, 2011
TIME: 10:45 a.m.—12:45 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Jones, Chair; Senator Sachs, Vice Chair; Senators Altman, Dean, Diaz de la Portilla, Hill, Norman, Rich, Siplin, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Monitor Project 2011-370	(Implementation of Chapter 2009-170, Laws of Florida, Relating to Pari-mutuel Facilities) Presentation	
2	Interim Project 2011-133	(Review the Expansion of Casino Gaming in Other States) Presentation	
3	Issue Brief 2011-223	(Review Internet Poker) Presentation	

INTERIM MONITOR PROJECT TITLE:

Implementation of Chapter 2009-170, Laws of Florida, Relating to Pari-mutuel Facilities

DATE DUE: N/A

PROJECT NUMBER: 2011-370

ISSUE DESCRIPTION and BACKGROUND:

Chapter 2009-170, L.O.F., passed during the extended 2009 Regular Session. The legislation provided terms for a gaming compact to be negotiated by the Governor and ratified by the Legislature and amended various provisions related to the pari-mutuel facilities including extending cardroom hours, removing wager limits on poker games, lowering the tax rate and license fees for slot machine facilities, and reducing other regulatory burdens. The provisions would take effect only if the Governor and the Seminole Tribe of Florida signed a gaming compact that substantially mirrored the provisions related to the compact that were found in ch. 2009-170, L.O.F., and only if that compact was ratified by the Legislature and approved or deemed approved by the Department of Interior. Although the Tribe entered into a compact with the Governor, that compact was not ratified by the Legislature. As a result, the provisions related to the pari-mutuel facilities never took effect.

During the 2010 Regular Session, the Legislature passed ch. 2010-29, L.O.F., that ratified the Tribal-state compact between the Seminole Tribe of Florida and the State of Florida. The legislation also amended the effective date of ch. 2009-170, L.O.F., making the effective date of the pari-mutuel provisions July 1, 2010.

OBJECTIVE:

To monitor the implementation of the pari-mutuel provisions found in ch. 2009-170, L.O.F., and to track whether or not the pari-mutuel facilities experience any positive revenue growth.

METHODOLOGY:

Senate professional staff will monitor the submission of the taxes and reports submitted to the Department of Business and Professional Regulation, Division of Pari-mutuel Wagering by the pari-mutuel wagering facilities. The Senate professional staff will survey news articles, federal activity, and litigation regarding the implementation of the law.

By: Tiffany Harrington &
Miguel Oyamendi

**REVIEW EXPANSION OF
CASINO GAMING IN OTHER
STATES
2011-133**

Overview

- Recommendations
- Current gaming activities in Florida
- Impact of expansion on Seminole Compact
- Expansion of gaming nationwide
- Decision points for authorization
- Perspectives from the industry
- Questions

Recommendations

- This is not a recommendation to expand gaming
- Fiscal impact to the Seminole Compact
 - Location
 - Timing
- Decision Points for the Legislature

The Current State of Florida Gaming

In general, gambling is illegal in Florida.

- Chapter 849, F.S.

Florida Gaming Today – Authorized Gaming

- 27 Pari-mutuel Facilities/23 Cardrooms
- 5 Slot-based Racinos
- 7 Seminole Casinos
- State Lottery

Gaming Revenue

Fiscal Year 2009-2010

- Pari-mutuel wagering - \$16.7 million
- Slots at pari-mutuels - \$154 million
- Cardrooms - \$11 million
- Seminole Tribe - \$150 million
- Lottery - \$1.2 billion
- Total - \$1.58 billion

Seminole Compact

- In 2010, the State of Florida and the Seminole Indians entered into a compact to allow Class III gaming at Tribal facilities.
- Tribal Compact provides revenue sharing payments in exchange for limited gaming exclusivity.
- Tribe guarantees \$1 billion in payments for first five years of Compact.
- If gaming expands in Florida, payments from the Tribe may be reduced or may stop.

Potential Impact on the Seminole Compact if Gaming Expands in Florida

- ◉ Tribe may continue to conduct gaming under the valid compact.
- ◉ Payments may be reduced or stop entirely – depends on the location of the new gaming.

Exceptions to Tribal Exclusivity

- ⦿ Games authorized under ch. 849 as of February 1, 2010
- ⦿ Compacts with other Tribes
- ⦿ Slot machines at the existing 8 pari-mutuel facilities in Miami-Dade and Broward
- ⦿ Historic racing or electronic gaming at pari-mutuels outside of Miami-Dade and Broward
- ⦿ Poker and no limit poker
- ⦿ Lottery games authorized as of February 1, 2010
- ⦿ Specified Lottery Vending Machines

Tribal Payment Reduction

- (1) If Expansion Outside of Miami-Dade and Broward – Revenue Sharing Stops when new gaming begins
- (2) If Expansion Limited to Miami-Dade and Broward - Reduced Revenue Sharing
 - If limited to 8 Pari-mutuel facilities, Tribe may reduce payments if Tribal net win decreases
 - If authorized in Miami-Dade or Broward, but not limited to pari-mutuels, Tribe excludes Broward net win from calculations

Timing

- After 5 years, Tribe to renegotiate banked card games.
- If authorization for games are not extended, net win calculations for revenue sharing payment to State exclude Tribal facilities in Broward county.
- If casino expansion before year 5, Tribe may continue to offer banked games and renegotiation unnecessary.
- Tribe may conduct any game authorized for any other person for any other reason.

Tribal Gaming If Expansion

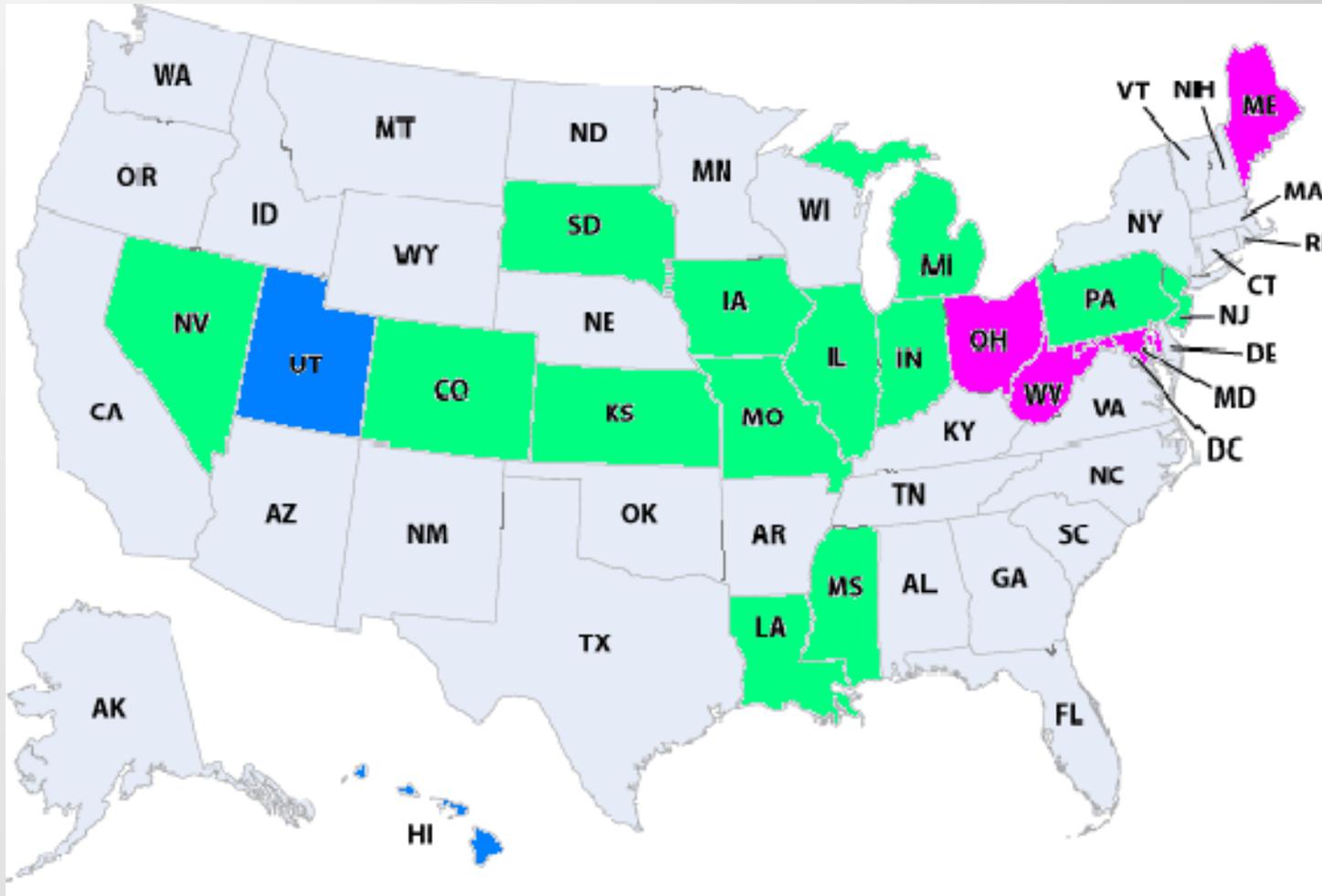
- Compact remains valid
- Tribe may continue to offer authorized games plus any newly authorized games at all 7 Tribal facilities
- Renegotiation for new compact at end of 20 year term

2009-2010 Casino Gaming

13 States:

- Colorado
- Illinois
- Indiana
- Iowa
- Kansas
- Louisiana
- Michigan
- Mississippi
- Missouri
- Nevada
- New Jersey
- Pennsylvania
- South Dakota

Nationwide Casino Expansion



Decision Points for Casino Gaming Expansion

Limits on Casino Gaming

Limiting the Authorized Games

Traditional Casino Games:

- Slot Machines
- Blackjack
- Poker
- Roulette
- Baccarat
- Craps

Limits on Gaming

- ① Maximum Bet Limits
- ① Total Number of Games
- ① Number and Location of Casinos

Racinos

Racinos in States with Casinos

The gaming activities allowed in the racinos varies by state:

- Indiana - slots
- Louisiana – slots
- Iowa - slots, table games, and video games that simulate table games.
- Pennsylvania - slots and table games, including blackjack, craps, poker, roulette.

Maximum Gaming Taxes

Indiana Riverboats Casinos = 40 percent
Racinos = 35 percent

Iowa Casinos = 10 percent to 22 percent
Racinos = 24 percent

Louisiana Casino/Riverboats = 21.5 percent
Racinos = 18.5 percent tax

Penn. Racinos and Casinos = 55 percent

Selection of Casino Operators

- Competitive Bid application process (Request for Proposal), or
- Non-competitive application process.

Competitive Bid Process

These typically address issues of:

- Economic development
- Proposed investment in infrastructure
- Adequate capital
- Expertise to manage the casino

Competitive Bid Process

The Legislature could require:

- A minimum for the value of the proposed economic development.
- That the bid include a direct payment to the state.

Fees and Assessments

Upfront License Assessments

- Application fee
- License fee
 - This fee can be minimal or a large amount
- Fee for the initial background investigation

Upfront License Assessments

- Indiana:
 - \$250 million in licensure fees
- Pennsylvania:
 - \$50 million slot machine license fee
 - \$16.5 million initial table game operation certificate fee
- Nevada:
 - \$5,000 application fee

Taxes

Taxes and Tax Rates

◎ Graduated Tax Rate

- High rates range from 6.75 percent in Nevada to 40 percent in Colorado.

◎ Flat Tax Rate

- High Rates range from 9 percent in South Dakota to 55 percent in Pennsylvania.

Tax Revenues

- **Colorado** = \$101 million
(Over 40 casinos and a tax rate of up to 40 percent)
- **Louisiana** = Over \$500 million
(One commercial casino, four slots-only racinos, and 15 riverboat casinos and tax rates that ranges as high as 21.5 percent)
- **Nevada** = Over \$600 million
- **Pennsylvania** = Over \$1 Billion
(14 authorized casinos and a flat tax rate of 55 percent)

Taxes or Fees for Gaming Devices and Table Games

Nevada: Devices

\$250 annual fee for each device; plus
\$20 per quarter for each device

Table Games

\$100 annual fee
\$16,000 annual fee if more than 16
tables.

S. Dakota: \$2000 annual fee for each device

Other Taxes

- ⦿ Admissions Tax
- ⦿ Local Taxes

Regulation

- **Separate State Agencies in Eight States**

- Colorado, Illinois, Indiana, Louisiana, Mississippi, Nevada, New Jersey, and Pennsylvania

- **One State Agency in Five States**

- Iowa, Kansas, Michigan, Nevada, and South Dakota

Advantages of Separating Regulatory Responsibilities

- Avoid conflict with non-regulatory duties under the compact.
- Better use of personnel expertise.
- Assure that the fees and taxes paid for one activity are not used to regulate another activity.

License of Other Casino Professionals and Activities

- Manufacturers and distributors of gaming equipment and supplies
- Casino employees

Current Professionals Licensed in Florida Racinos

- Employees with access to the gaming area, including food service, maintenance, and other similar service and support employees;
- Non employees who provide maintenance, repair of slot machines; and
- Manufactures and distributes of slot machines.

Compulsive Gaming Programs

- Every state with commercial casinos has a program for voluntary self-exclusion.
- States require casinos to donate to compulsive gaming programs
- States require casinos to include the toll-free number for such a program on any advertisement
- States can require that the casinos help fund treatment and research of gambling and substance abuse addictions.

Current Florida Compulsive Gaming Requirements

- Florida requires the racinos and the Tribe to contribute \$250,000 per year per facility to a compulsive or addictive gambling prevention program, the Florida Council on Compulsive Gambling.

Perspectives on Casino Models

- Boyd Gaming Corporation
- Las Vegas Sands Corporation
- Wynn Resorts, Ltd.

Questions?



The Florida Senate

Interim Report 2011-133

October 2010

Committee on Regulated Industries

REVIEW EXPANSION OF CASINO GAMING IN OTHER STATES

Issue Description

This study reviews the issues presented by the expansion of casino gaming in other states and identifies the issues and concerns that should be considered by the Legislature when determining whether to also authorize commercial casinos in Florida. The report identifies the federal and state laws that regulate gaming, and examines the impact of any expansion of casino gaming on the state's gaming compact with the Seminole Tribe of Florida.

The report reviews the implementation of casino gaming in the 13 states with commercial casinos, including the types of authorized casino games, any limitations on the number and placement of licensed casinos, the application processes, and the states' regulatory structures. The report also discusses the applicable fees and tax rates that other states have used to implement casino gaming, and presents the perspectives of the casino companies regarding how Florida could implement additional casino gaming.

This report does not recommend the expansion of gaming. It recommends that the Legislature should first consider whether it is in the best interest of the state to expand gaming. The report notes that, within the past year, the state has entered into a gaming compact with the Seminole Tribe and has implemented changes to multiple pari-mutuel cardroom and slot machine gaming laws. The report recommends that it may be the best policy decision to give these gaming changes time for the Legislature to review the impact of the Seminole compact on the pari-mutuel industry, and to have more information available to determine the financial revenue impact of the compact.

The report also provides recommendations on the principal issues that should be addressed by the Legislature when determining whether to adopt legislation to implement additional casino gaming, including whether the new gaming establishments would generate enough tax revenue to negate the amount of revenue sharing payments that could be lost under the terms of the state's compact with the Seminole Tribe, the number and location of the casinos, and the applicable tax rates and fees.

Background

A. Overview of Florida Gaming Laws and Regulations

In general, gambling is illegal in Florida.¹ Chapter 849, F.S., governs the conduct of gambling in Florida. Section 849.15, F.S., prohibits the manufacture, sale, lease, play, or possession of slot machines² in Florida. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S. Florida's gambling prohibition includes prohibitions against keeping a gambling house,³ and running a lottery.⁴ Section 7, Art. X of the Florida Constitution prohibits lotteries, other than pari-mutuel pools authorized by law on the effective date of the Florida Constitution, from being conducted in Florida by private citizens.⁵

¹ Section 849.08, F.S.

² Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S.

³ Section 849.01, F.S.

⁴ Section 849.09, F.S.

⁵ The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

Gaming is permitted at licensed pari-mutuel wagering tracks and frontons⁶ and by the state operated lottery,⁷ which must operate “so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens.”⁸

Chapter 849, F.S., contains other specific exceptions to the general gambling prohibition and authorizes certain gambling activities, such as cardrooms at pari-mutuel facilities,⁹ bingo,¹⁰ penny-ante poker,¹¹ arcade amusement games,¹² amusement games and machines,¹³ and game promotions.¹⁴ In Florida, if the gaming activity is not expressly authorized, then the gambling is illegal. Free-standing, commercial casinos are not authorized in Florida.

B. Pari-mutuel Wagering

The pari-mutuel industry in Florida is made up of greyhound racing, different types of horseracing, and jai alai.¹⁵ Pari-mutuel wagering is a “system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes.”¹⁶ The regulation of the pari-mutuel industry is governed by ch. 550, F.S., and is administered by the Division of Pari-Mutuel Wagering (division) within the Department of Business and Professional Regulation (department). Chapter 550, F.S., provides specific licensing requirements, taxation provisions, and regulations for the conduct of the industry.

Pari-mutuel facilities within the state are allowed to operate poker cardrooms under s. 849.086, F.S. No-limit poker games are permitted.¹⁷ A cardroom may be operated only at the location specified on the cardroom license issued by the division and such location may be only where the permitholder is authorized to conduct pari-mutuel wagering activities subject to its pari-mutuel permit. The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday.¹⁸ Authorized games and cardrooms do not constitute casino gaming operations. Instead, such games are played in a non-banking matter, i.e., the house¹⁹ has no stake in the outcome of the game. Such activity is regulated by the department and must be approved by an ordinance of the county commission where the pari-mutuel facility is located. Each cardroom operator must pay a tax of 10 percent of the cardroom operation’s monthly gross receipts.²⁰

C. Slot Machines at Pari-mutuel Facilities (Racinos)

Slot machine²¹ gaming at licensed pari-mutuels is governed by ch. 551, F.S. Pari-mutuel facilities that operate slot machine gaming or engage in other casino-style gaming are generally known as “racinos.” During the 2004 General Election, the electors approved Amendment 4 to the state constitution, codified as s. 23, Art. X, Florida

⁶ See ch. 550, F.S., for the regulation of pari-mutuel activities.

⁷ The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., provides the legislative purpose and intent in regard to the lottery.

⁸ See s. 24.104, F.S.

⁹ Section 849.086, F.S. Section 849.086(2)(c), F.S., defines “cardroom” to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.

¹⁰ Section 849.0931, F.S.

¹¹ Section 849.085, F.S.

¹² Section 849.161(1)(a), F.S.

¹³ Section 849.161(1)(b), F.S.

¹⁴ Section 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

¹⁵ “Jai alai” or “pelota” means a ball game of Spanish origin played on a court with three walls. See s. 550.002(18), F.S.

¹⁶ Section 550.002(22), F.S.

¹⁷ Section 849.086(8)(b), F.S. Prior to the effective date of ch. 2010-29, L.O.F., the maximum bet was \$5.

¹⁸ Section 849.086(7)(b), F.S. Prior to the effective date of ch. 2010-29, L.O.F., a cardroom operator could only operate a cardroom for 12 hours per day per pari-mutuel permit.

¹⁹ Section 849.086(2)(j), F.S., defines “house” as “the cardroom operator and all employees of the cardroom operator.”

²⁰ Section 849.086(13)(a), F.S.

²¹ Section 551.102(8), F.S., defines “slot machine” as the term is used in ch. 551, F.S., for the regulation of slot machine gaming at the qualifying Miami-Dade and Broward county pari-mutuels.

Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005. The electors approved slot machines at the pari-mutuel facilities in Broward County, but the measure was defeated in Miami-Dade County. Under the provisions of the amendment, four pari-mutuel facilities are eligible to conduct slot machine gaming in Broward County:

- Gulfstream Park Racing Association, a thoroughbred permitholder;
- The Isle Casino and Racing at Pompano Park, a harness racing permitholder;
- Dania Jai Alai, a jai alai permitholder; and
- Mardi Gras Race Track and Gaming Center, a greyhound permitholder.

The division is charged with regulating the operation of slot machines in the affected counties.²² Of the four eligible facilities in Broward County, three are operating slot machines and Dania Jai Alai is not at this time.

On January 29, 2008, another referendum was held in Miami-Dade County and slot machines were approved. Under the provisions of Amendment 4, three pari-mutuel facilities are now eligible to conduct slot machine gaming in Miami-Dade County:

- Miami Jai-Alai, a jai-alai permitholder;
- Flagler Greyhound Track, a greyhound permitholder; and
- Calder Race Course, a thoroughbred permitholder.

Of the three eligible in Miami-Dade County, Calder and Flagler are operating slot machines.

In addition to the slot machines authorized under the Florida Constitution, Class III slot machines are also permitted in a charter county or a county that has a referendum approving slots that was approved by law or the Constitution, provided that such facility has conducted live racing for two calendar years preceding its application and complies with other requirements for slot machine licensure.²³ Currently, only existing pari-mutuel facilities in Miami-Dade County qualify for slot machine authorization.

Slot machine licensees are required to pay a license fee of \$2.5 million for fiscal year 2010-2011. The annual slot machine license fee is reduced in fiscal year 2011-2012 to \$2 million.²⁴ In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.²⁵ If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee must pay to the state, within 45 days after the end of the state fiscal year, a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year.²⁶

D. Seminole Indian Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a tribal-state compact under the Indian Gaming Regulatory Act of 1988²⁷ that authorizes the Tribe to conduct Class III gaming²⁸ at seven tribal facilities throughout the state. The compact was subsequently ratified by the Legislature.²⁹

²² Section 551.103, F.S.

²³ Section 551.102(4), F.S.

²⁴ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was \$3 million.

²⁵ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.

²⁶ Chapter 551.106(2), F.S. The 2008-2009 tax paid on slot machine revenue was \$103,895,349. It does not appear that this provision will be triggered because of the additional facilities beginning slot operations. Calder began slot operations in January 2010 and Flagler began operations in October 2009. Miami Jai Alai and Dania Jai Alai have not begun slot operations.

²⁷ The Indian Gaming Regulatory Act of 1988 or "IGRA", Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 et seq.

²⁸ The Indian Gaming Regulatory Act of 1988 divides gaming into three classes:

The compact has a 20 year term. It permits the Tribe to offer slot machines, raffles and drawings, and any other new game authorized for any person for any purpose, at all seven of its tribal casinos.³⁰

The compact permits the Tribe to conduct banked card games, including blackjack, chemin de fer, and baccarat, but the play of the banked card games is not allowed at the casinos at the Brighton or Big Cypress facilities. If these banked games are authorized for any other person for any other purpose, except if banked card games are authorized by a compact with the Miccosukee Indians, the Tribe would be authorized to offer banked cards at all 7 of its facilities. The authority for banked card games terminates at the end of five years unless affirmatively extended by the Legislature or the Legislature authorizes any other person to offer banked card games. The compact refers to the authorized games by the term “covered games.”

In exchange for the Tribe’s exclusive right to conduct slot machine gaming outside of Miami-Dade and Broward counties and the exclusive right to offer banked card games at the specified facilities (these grants of authority are known as the “exclusivity provision”), the compact provides for revenue sharing payments by the Tribe to the state as follows:

- During the initial period (first 24 months), the Tribe is required to pay \$12.5 million per month (\$150 million per year);
- After the initial period, the Tribe’s guaranteed minimum revenue sharing payment is \$233 million for year 3, \$233 million for year 4, and \$234 million for year 5;
- After the initial period, the Tribe pays the greater of the guaranteed minimum or payments based on a variable percentage of annual net win³¹ that range from 12 percent of net win up to \$2 billion to 25 percent of the amount of any net win greater than \$4.5 billion;
- After the first five years, the Tribe would continue to make payments to the state based on the percentage of net win without a guaranteed minimum payment; and
- If the Legislature does not extend the authorization for banked card games after the first five years, the net win calculations would exclude the net win from the Tribe’s facilities in Broward County.

The exclusivity provision provides conditions which could lead to a cessation or reduction of revenue sharing payments from the Tribe. Revenue sharing payments cease if:

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- “Class I gaming” means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations.
 - “Class II gaming” includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo. Class II gaming may also include certain non-banked card games if permitted by state law or not explicitly prohibited by the laws of the state but the card games must be played in conformity with the laws of the state. A tribe may conduct Class II gaming if:
 - the state in which the tribe is located permits such gaming for any purpose by any person, organization or entity; and
 - the governing body of the tribe adopts a gaming ordinance which is approved by the Chairman of the National Indian Gaming Commission.
 - “Class III gaming” includes all forms of gaming that are not Class I or Class II, such as house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

²⁹ Chapter 2010-29, L.O.F.

³⁰ *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. (hereinafter *Gaming Compact*) The Tribe has three gaming facilities located in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa).

³¹ The compact defines “net win” as “the total receipts from the play of all Covered Games less all prize payouts and free play or promotional credits issued by the Tribe.”

- The state authorizes new forms of Class III gaming or other casino-style gaming after February 1, 2010, or authorizes Class III gaming or other casino-style gaming at any location that was not authorized for such games before February 1, 2010; and
- The new gaming begins to be offered for private or public use.

However, if the expansion of gaming occurs by the result of a court decision or agency decision, the Tribe's payments would be placed in an escrow account and the Legislature would have until the end of the next session or 12 months (whichever is shorter) to reverse such a decision. If the Legislature fails to act, the money is released back to the Tribe and the Tribe's payments would stop.

The compact also addresses the issue of Internet gaming. It provides that, if the state authorizes Internet gaming and the Tribe's net win falls by 5 percent, the Tribe would be entitled to make payments based on the percentage of net win and would not be required to make the guaranteed minimum payments to the state. This provision is not applicable if the reduction is due to an act of God or if the Tribe offers Internet gaming.

The exclusivity provision of the compact sets forth multiple exceptions that permit gaming without affecting the revenue sharing payments. These include:

- Compacts with other tribes;
- Slot machine gaming at the eight existing pari-mutuel facilities in Broward and Miami-Dade counties;
- Games authorized under ch. 849, F.S., as of February 1, 2010;
- Specified games of historic racing or electronic bingo at pari-mutuel facilities licensed as of February 1, 2010, and located outside of Broward and Miami-Dade counties;
- Pari-mutuel wagering activities at facilities licensed by the state; and
- The operation of poker and no-limit poker at card rooms licensed by the state.

The compact provides a limited exception for the Lottery. The exception includes the types of lottery games authorized under ch. 24, F.S., on February 1, 2010. The state may also authorize specified types of Lottery Vending Machines (LVM) that dispense lottery tickets but that do not reveal the winner or use slot machine-type spinning reels. The lottery may dispense electronic instant lottery tickets by an LVM that displays an image of the ticket on a video screen that the player must touch to reveal the outcome of the ticket. The bill limits the number of LVM's that may be installed at any location to 10 machines and provides that no LVM that dispenses electronic instant tickets may be installed at any licensed pari-mutuel facility.

The compact provides for the expansion of gaming in Miami-Dade and Broward counties under the following limited circumstances:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuels located in Miami-Dade and Broward counties and if the net win from the Tribe's Broward facilities drops for the year after the new gaming begins, then the Tribe may reduce the payments from its Broward facilities by 50 percent of the amount of the reduction in net win.
- If new forms of Class III gaming and other casino-style gaming are authorized for other locations in Miami-Dade and Broward counties, then the Tribe may exclude the net win from their Broward facilities from their net win calculations when the new games begin to be played.
- If new games are authorized to any location in Miami-Dade and Broward counties within the first five years of the Compact, the guaranteed minimum payment would no longer apply to the Tribe's revenue sharing payments and the one billion dollar guarantee would not be in effect. The Tribes payments would be based on the applicable percentage of net win.

Findings and/or Conclusions

A. Methodology

In preparation of this report, the Senate professional committee staff reviewed and analyzed gaming provisions of the Florida Constitution, the Seminole Indian compact, federal and state gaming laws, relevant case law, articles related to the commercial casino industry, and gaming laws and regulations in other jurisdictions. Senate professional committee staff also discussed the issues addressed in this report with representatives of the Division of Pari-Mutuel Wagering within the Department of Business and Professional Regulation, and representatives for the commercial casino industry.

B. Revenues Generated From Gaming in Florida

In fiscal year 2009-2010, the state generated the following in revenues from gaming:³²

Pari-mutuel wagering taxes and fees	\$16,791,209.00
Slots	\$154,776,678.00
Cardrooms	\$11,369,062.00
Seminole Tribe	\$150,000,000.00
Lottery	\$1,247,327,000.00
Total	\$1,580,263,949.00

C. Impact Gaming Expansion Would Have on Seminole Compact

The exclusivity provisions in the state's compact with the Seminole tribe may affect the state's options for expanding gaming to include full commercial casinos with slot machines, banked table games, and other casino-style gaming.

The authorization for full commercial casinos would constitute a casino style and Class III gaming expansion. As noted, the expansion of Class III or other casino-style gaming in Florida could affect the revenue sharing payments that the Tribe is required to make to the state under the compact. Any cessation or reduction of revenue sharing payments upon the expansion of casino gaming would depend on the location of the new casinos. It is important to stress that any cessation or reduction of revenue sharing payments would only occur when the first Class III or other casino-style game is played. The mere authorization of Class III gaming or other casino-style gaming would not affect the payments.

It is also important to note that the state's expansion of Class III gaming or casino-style gaming would not mean that the state had violated its compact with the Tribe. The compact specifies the consequences, particularly the financial ramifications, if the state elects to expand gaming in this state, and does not expressly prohibit any such expansion.

Expansion Outside of Miami-Dade and Broward – Revenue Sharing Stops

If the expansion of Class III gaming or other casino-style gaming occurs outside of Miami-Dade and Broward counties, all of the Tribe's revenue sharing payments would stop.³³

Expansion Limited to Miami-Dade and Broward - Reduced Revenue Sharing

If the expansion of Class III gaming and casino-style gaming is allowed at the eight licensed pari-mutuels located

³² The figures for slot machine gaming, cardroom operations, and pari-mutuel wagering include licensing fees were provided by the Department of Business and Professional Regulation. The total revenue generated from pari-mutuel wagering, slot machine gaming, and cardrooms totaled approximately \$183 million.

³³ See Part XII. A., *Gaming Compact, supra n. 29*.

in Miami-Dade and Broward counties³⁴ and the annual net win from the Tribe's facilities in Broward County³⁵ is reduced for the year after the new gaming begins, then the Tribe may reduce its payments from its Broward facilities by 50 percent of the amount of the reduction in net win.³⁶

If the expansion of Class III gaming or other casino-style gaming is allowed at any other location in Miami-Dade or Broward counties, the Tribe would continue to make revenue share payments, but the Tribe would exclude the net win from their Broward facilities. According to the division, the net win from the Tribe's Broward facilities equals approximately 47 percent of the Tribe's total net win. Therefore, if the casino-style gaming were expanded and limited to Miami-Dade and Broward counties the Tribe's payments would be reduced by approximately 47 percent.

In addition, if the new Class III or casino-style games were authorized for any location in Miami-Dade or Broward counties within the first five years of the compact, the guaranteed minimum payment and the one billion dollar guarantee for the first 5 years of the compact would no longer apply. The Tribes payments would be based on the applicable percentage of net win.

Tribal Gaming after the Expansion of Commercial Casinos

Once the new gaming begins at authorized casinos, the Tribe may continue to offer the covered games plus any additional games that are authorized for the commercial casinos.³⁷ The Tribe will have to renegotiate a new Compact for Class III games when the Compact expires at the end of its 20-year term,³⁸ but it is not clear what reason the Tribe would have to renegotiate the revenue sharing terms if the Class III gaming or other casino-style gaming were authorized for other casinos. However, the Tribe would have to negotiate a new compact at the end of the current compact's term before it could continue to offer the covered games.³⁹

D. Discussion on Whether Casino Gaming Expansion Requires Constitutional Amendment

There is a question of whether the Florida Constitution permits the Legislature to authorize commercial casino gaming. The Florida Constitution is silent on the subject of casino gaming. However, the Florida Constitution does not prohibit the Legislature from creating laws to authorize, regulate, or tax gaming in the state. With regard to gaming, the Florida Constitution only addresses the subjects of lotteries and slot machine gaming. Sections 7 and 15, Art. X of the Florida Constitution prohibits lotteries, except pari-mutuel pools permitted by state law, but specifically allow for state operated lotteries. As discussed above, s. 23, Art. X of the Florida Constitution permitted voters in Miami-Dade and Broward counties to approve slot machine gaming by a county-wide referendum in existing, licensed pari-mutuel facilities that have conducted gaming the two years prior to the amendment.⁴⁰

The Florida constitution limits the power of the Legislature.⁴¹ As a result, the Legislature "looks to the Constitution for limitations on its power and if not found to exist its discretion reasonably exercised is the sole brake on the enactment of legislation."⁴²

³⁴ Mardi Gras Gaming, Isle of Capri, Gulfstream, Dania Jai alai, Flagler Dog Track, Calder Race Track, Miami Jai Alai, and Hialeah Park Race Track. The compact permits slot machine gaming at Hialeah Park Race Track without affecting any revenue sharing payments from the Tribe.

³⁵ Seminole Indian Casino-Coconut Creek, Seminole Indian Casino – Hollywood, and Seminole Hard Rock Hotel & Casino-Hollywood.

³⁶ Part XII. B.3.(b), *Gaming Compact*, *supra* at n. 29.

³⁷ See the definition of covered games at Part III.F.4., *Gaming compact*, *supra* at n. 29.

³⁸ See Part XVI.B., *Gaming Compact*, *supra* at n. 29.

³⁹ IGRA at 18 U.S.C. s. 2710(d)(1)(C).

⁴⁰ The amendment was a citizen initiative petition and adopted in 2004. The two years prior to the amendment were 2002 and 2003.

⁴¹ See *Chiles v. Phelps*, 714 So.2d 453, 458 (Fla.1998) (citing *Savage v. Board of Public Instruction*, 101 Fla. 1362, 133 So. 341, 344 (1931)).

⁴² *State v. Board of Pub. Instruction*, 126 Fla. 142, 151, 170 So. 602, 606 (1936).

The legislature has the authority and the power to ascertain what types of gaming and gambling may be conducted in the state as gambling is not prohibited by the Florida Constitution.⁴³ Lotteries, other than a Lottery operated by the state, are prohibited by the Florida Constitution.⁴⁴ It does not appear that the term “lottery” includes casino-style gaming. While the Florida Constitution or the Florida Statutes do not define the term lottery, the court, in *Lee v. City of Miami*,⁴⁵ held that a slot machine was not a lottery device. In *Hardison v. Coleman*⁴⁶ the court held that a lottery was

such gambling devices or methods which because of their wide or extensive operation a whole community or country comes within its contaminating influence; a scheme having the elements of advertising or sale to any individual of tickets and public distribution and division of prizes according to the numbers upon a ticket previously sold which entitled the owner to participate in a drawing or distribution of prizes to be made at a date in the future.

Even though the Florida Constitution does not specifically prohibit any form of gaming other than lotteries that are not state operated, there are pending court cases that address the issue of whether the constitutional amendment authorizing slot machine gaming at the specified pari-mutuel locations in Broward and Miami-Dade counties restricts the authority of the Legislature to authorize slot machine gaming or other casino-style gaming in locations other than those specified in the constitution. Two lawsuits challenge the constitutionality of the expanded definition of “eligible facility” in s. 551.102(4), F.S., claiming that an expansion beyond the constitutional defined parameters is a violation of the constitution. These lawsuits challenge the Legislature’s authority to authorize slot machine gaming outside the pari-mutuel facilities enumerated in s. 23, Art. X, of the Florida Constitution, which references pari-mutuel facilities that were existing and had conducted live racing or games in that county during each of the last two calendar years before the effective date of the amendment (2004).⁴⁷

The statutory expansion of “eligible facility” includes licensed pari-mutuel facilities located in charter counties as defined by s. 125.011, F.S., provided the facility has conducted live racing the two prior calendar years. The expanded definition includes Hialeah Park, a quarter horse track, among the facilities that may qualify to conduct slot machine gaming. Hialeah Park did not qualify under the constitutional amendment. A decision in the lawsuits could limit the Legislature’s ability to authorize slot machines or other casino-style gaming at other locations in the state.

E. Decisions Points for Casino Gaming

The Las Vegas Strip emerged in the 1940s. Over thirty years later, casino gaming was legalized in Atlantic City, New Jersey. The landscape of casino gaming has changed drastically within the last decade. Excluding casinos operated by the Indian tribes and racinos, 13 states had operational casinos in 2010. As a result, gaming is no longer limited to Las Vegas and Atlantic City. Now persons who want to visit a casino can find one in Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, Pennsylvania, and South Dakota. In 2009, Ohio authorized four casinos. A citizen initiative is on the November 2010 ballot in Maine to authorize casino gaming. Maryland approved casino gaming in 2008.⁴⁸ New York, Massachusetts, Rhode Island, and Texas are also considering authorizing casinos.

⁴³ *Lamkin v. Faircloth*, 204 So.2d 747 (Fla. 2d DCA 1968).

⁴⁴ Section 7, Art. X, Florida Constitution. State operated lotteries are authorized by s. 15, Art. X, Florida Constitution.

⁴⁵ *Lee v. City of Miami*, 163 So. 486 (Fla. 1935).

⁴⁶ *Hardison v. Coleman*, 164 So. 520 (Fla. 1935).

⁴⁷ *Calder Race Course, Inc., v. Florida Department of Business and Professional Regulation and South Florida Racing Assoc., LLC*, No. 2010-CA-2132 (Fla. 2nd Cir. Ct.) and *Florida Gaming Centers, Inc., v. Florida Department of Business and Professional Regulation and South Florida Racing Assoc., LLC*, No. 2010-CA-2257 (Fla. 2nd Cir. Ct.), challenging the slot machine gaming at Hialeah Park as authorized by chs. 2009-170 and 2010-29, L.O.F. Hialeah Park did not satisfy the constitutional requirement of having conducted live racing during the two years prior to the constitutional amendment.

⁴⁸ Maryland is not included in this report as one of the 13 states with full commercial casinos because Maryland law authorizes only slot machine gaming at four facilities state-wide and not full casino gaming. Maryland’s first slot machine casino opened on September 28, 2010.

Based on a review of casino gaming in the 13 states with commercial casinos, this section will discuss the types of casino games authorized in the 13 jurisdictions, any limitations on the number and placement of licensed casinos, the application process, and states' regulatory schemes. This section explores the applicable fees and tax structures that other states have used to implement casino gaming. In addition, this section discusses other issues that can be considered when determining whether commercial casino gaming should be authorized in Florida.

1. Authorized Casino Games

An issue to consider when authorizing commercial casinos is the games that may be played in the casino. The majority of the states with commercial casino gaming have authorized every traditional casino-style game, including slots, keno machines, blackjack, poker, roulette, baccarat, and craps. Many states list every authorized game and others, like Illinois, provide a list but state that casino gaming is not limited to the games included on the list. South Dakota casinos are the most limited in that they can only conduct slots, poker, and blackjack. Some states have maximum bet limits, such as Colorado and South Dakota, which have \$100 bet limits.

Some states limit the number of table games and the number of slot machines in addition to the type of games that may be authorized. For example, South Dakota limits the total number of table games and slots to 30 per licensee. In Pennsylvania, slot machines were initially the only authorized games at the casinos. In January 2010, live table games were authorized for the casinos. The authorized games include blackjack, poker, baccarat, roulette, and craps. The casinos in Pennsylvania are also limited in the number of tables they may make available. Racinos and stand-alone casinos in that state are authorized up to 250 tables and resort casinos⁴⁹ may offer up to 50 tables.

In addition to other casino-style games, Nevada has legalized sports betting.⁵⁰

2. Pari-mutuel Racino Activity

Only four of the 13 states with commercial casinos have active racinos. The states that have racinos tend to limit the gaming that pari-mutuel facilities may offer. For example, in Indiana and Louisiana, the racinos may only offer slot machine gaming. In Iowa, the racinos may offer slots, table games of chance, and video games that simulate table games. However, in Pennsylvania, the pari-mutuels may be issued a full casino license and operate as full commercial casinos.

The taxation of racino activities varies by state. In some states, the racino tax structure is the same as for the casino,⁵¹ in some the racino is taxed higher,⁵² and in some the racino is taxed lower.⁵³

Pennsylvania reserved seven licenses for horse racing pari-mutuels when the 14 casino licenses were authorized. In Pennsylvania, the pari-mutuels who receive a casino license are taxed and regulated equally with stand-alone casino facilities.

In Florida, the five slots-only racinos are currently taxed at 35 percent. Taxes from slots-only racinos generated \$138 million in revenues for the state in FY 2009-2010.⁵⁴ If additional casinos are authorized in the state, it would create additional competition for the racinos and could potentially reduce the tax revenues generated by the racinos. Consideration could be given to the racinos in recognition as long-standing businesses in the state by

⁴⁹ A resort casino has a hotel license that requires the maintenance of substantial year-round recreational amenities. Only two resort casino licenses are authorized.

⁵⁰ In 2009, \$2.57 billion was legally wagered in Nevada's sports books.

⁵¹ For example, in Pennsylvania, the taxation for pari-mutuels who obtain a casino license is the same as for other stand-alone casinos.

⁵² In Iowa, the tax rate for casinos ranges from 10 percent to 22 percent. However, the racinos are subjected to a graduated tax rate as high as 24 percent.

⁵³ In Louisiana, racinos are taxed at a flat 18.5 percent while the riverboats and the stand-alone casino are subject to a 21.5 percent tax rate. In Indiana, the riverboat casinos are subject to a graduated tax rate that ranges from a high of 40 percent, while the racinos have a tax rate that ranges from as high as 35 percent.

⁵⁴ The tax revenue collected is for three facilities that operated a full year and two facilities that operated partial years. Flagler Greyhound and Calder/Tropical Park began operations mid-fiscal year. The racinos were subject to a 50 percent tax rate before July 1, 2010. *See supra* n. 25.

allowing additional games, lower tax rates, or by creating avenues to allow for full casino licensure for pari-mutuels in a manner similar to Pennsylvania.

3. Selection of Casino Operators

This section will discuss the methods by which the states with commercial casinos grant or award licenses to operate casinos. All of the states with commercial casinos require basic qualifications for the casino operators, such as evidence of good moral character and the absence of a criminal record. The two primary methods by which casino licenses are granted or awarded are through a competitive proposal or bid application (also known as a Request for Proposal or RFP process) or through a non-competitive application process.

The non-competitive application process sets forth basic qualification requirements and does not typically consider the applicant's qualifications relative to the qualifications of other applicants for a license. Seven of the thirteen states with commercial casinos use the non-competitive, application process to grant licenses to operate commercial casinos. These states also do not have a statutory limit on the number of casino licenses that may be issued. The non-competitive, application process is the common practice in states that do not limit the number of casinos.⁵⁵ In the non-competitive application process, the applicant only needs to satisfy the basic license requirements, and the casino license applicant is not required to make any payments beyond the application fee, license fee, the background investigation fee, and the applicable taxes.

The alternative method involves a competitive application process in which the applicants present proposals or bids for the operation of the casino.⁵⁶ The proposals or bids typically address the issues of economic development, including the applicant's proposed investment in infrastructure, such as hotel and in non-casino entertainment facilities. All of the states with a competitive application process also consider whether the applicant has adequate capitalization and the experience or expertise to manage the proposed casino operation. However, the key consideration common to all the competitive bid states is whether the applicant has the ability to maximize gaming revenue and thereby maximize the potential state revenue.

Some states, such as Illinois, specifically reference a competitive bidding process that provides that the gaming license would be granted to the highest bidder. However, most states with a competitive process rely on the discretion of the agency that grants the license. Such discretion is typically exercised in relation to a suitability requirement which references standards such as the applicant's potential for new job creation and economic development and the applicant's history of success in developing tourism facilities.

A state may also provide a statutory minimum for the value of the proposed economic development. For example, Kansas requires minimum investments in infrastructure, which are dependent on the location of the proposed gaming facility and range from \$50 million to \$225 million.

In addition, the competitive proposal or bid could include direct payments to the state. Illinois was the only state that uses the competitive process in which the winning applicant agreed to make a direct payment to the state.⁵⁷ On February 10, 2010, the Illinois Gaming Board selected the 10th and most recent winning applicant. The selected applicant agreed to pay \$2.5 million within 10 days of its initial selection, \$47.5 million within 60 days of being found suitable for license, and an additional \$75 million when it is licensed by the board, which would coincide with operations commencing. Illinois law does not specify the minimum amount of the payments. It is not clear whether other states could require a minimum bid that includes direct payments to the state. For

⁵⁵ The following states with commercial casinos use an application process that does not rely on competitive proposals or bids to award a casino license: Colorado, Mississippi, Missouri, Nevada, New Jersey, South Dakota. These states also do not limit the number commercial casino.

⁵⁶ Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, and Pennsylvania award casino licenses through a competitive bid process. These states also limit the number of casino licenses.

⁵⁷ However, the state of New York granted Genting Malaysia the right to develop a slot machine gaming racino for the Aqueduct Racetrack in exchange for an up-front payment of \$380 million, which was \$80 million more than the minimum amount required. In a state-wide referendum in 2001, the voters of New York approved slot machine gaming for the Aqueduct Racetrack. The Aqueduct Racetrack would be the only racino in the state, but the state also has three Indian casinos (Oneida Indian Nation, the St. Regis Mohawk Tribe, and the Seneca Nation of Indians).

example, according to an attorney for the Indiana Gaming Commission, direct payments to the state could theoretically be a part of the state's bid process, but that has not been their practice.

4. Up-Front Casino License Assessments

All thirteen states require the applicant to submit an application and require up-front fees that include a license fee plus the costs of the initial background investigation.⁵⁸ Some states have a rather small license fee while others charge up to \$250 million for a license.⁵⁹ Pennsylvania, a state that has 14 authorized casinos, requires an initial slot machine license fee of \$50 million and an initial table game operation certificate fee of \$16.5 million.⁶⁰ In contrast, Nevada, a state that has an unlimited number of casino licenses, only charges a \$5,000 application fee.

5. Limiting the Number and Location of Casinos

This section discusses limitations on the number and location of casino licenses that have been authorized in the 13 states with casinos. Seven of the 13 states with commercial casinos allow an unlimited number of casinos. The other six states have a limit on the number of casinos. For example, Illinois only authorizes 10 riverboat licenses, Louisiana has created a single commercial casino establishment, Michigan authorized three casinos, and Pennsylvania authorized a total of 14 casinos. In addition to limiting the total number of authorized licenses, some states also limit the types of casino licenses. In Pennsylvania, the state has authorized a total of 14 casinos but has limited the type of casinos that may be licensed. For example, seven casinos may be authorized for horse racing pari-mutuels, five may be authorized for free standing facilities, and two may be authorized for hotel-resorts.

In addition to the number of licenses authorized, another consideration is whether to place any geographical restrictions on the location of the casinos. Some states allow an unlimited number of licensees that can be located anywhere in the state while others limit the gaming to one or more specified geographic regions within the state. In Colorado, the casinos may be located in any one of three old mountain towns (Black Hawk, Central City, and Cripple Creek). Casinos can be placed without limitation in Iowa, except that a county referendum is required. In Kansas, one casino may be located in each of four gaming zones. Michigan's three casinos must all be located in the City of Detroit.

There may be advantages and disadvantages in limiting the number and placement of licenses. It could be considered an advantage to limit the total number of casino licenses because there is less competition when there are fewer licensees. Locating the casinos together could create a gaming destination in the state, while spreading them apart would lessen the competition for each individual casino, and thereby give the casino some geographical exclusivity.

6. Taxes and Tax Rates

This section discusses the tax rates imposed by the 13 states that have commercial casinos and the tax revenues generated by the casino gaming activities. Six states have a graduated tax rate based on the revenues generated by casino gaming. Six states have a flat tax rate. Kansas does not have a tax rate because the Kansas State Lottery owns the state casinos. In addition to state taxes, many states also charge an admission tax or fee,⁶¹ authorize a local tax,⁶² and assess a tax or fee for individual gaming devices or gaming tables.

⁵⁸ South Dakota appears to use the application fee to defray the costs of the investigation and does not charge an additional background investigation fee.

⁵⁹ The total licensing fee for each racino in Indiana is \$250 million.

⁶⁰ The two authorized resort facilities pay a smaller licensure fee than the horse racing casinos and the stand alone casinos. Instead of \$50 million and \$16.5 million for slot licensure and table game certification, the resort facilities only pay \$5 million for slot licensure and \$7.5 million for table game certification.

⁶¹ For example, Indiana charges an admission tax of \$3 per person for riverboat gaming and Missouri charges an admission fee of \$2 per person.

⁶² Mississippi, as an example, has a graduated tax rate for both state taxation and local taxation. The state tax rate ranges from 4-8 percent while the local rate ranges from 4-10 percent. Michigan, on the other hand, charges a flat rate of 8.1 percent for state tax and 10.9 percent for the city tax.

Graduated tax rates for casino gaming exist in Colorado, Illinois, Indiana,⁶³ Iowa, Mississippi, and Nevada. The rates vary with maximum tax rates reaching as high as 6.75 percent in Nevada and to a high of 40 percent in Colorado. Some states have two different tiers of taxation for pari-mutuel racino activity and commercial gaming activity. For example, in Iowa, the graduated tax rate for casinos ranges from 10 percent to 22 percent, while the tax rate for racinos in the state may range as high as 24 percent.⁶⁴

Flat tax rates exist in Louisiana, Michigan, Missouri, New Jersey, Pennsylvania, and South Dakota. The rates vary in each state. For example, Missouri has a flat tax of 21 percent, Pennsylvania has a flat tax of 55 percent, and South Dakota has a flat tax of 9 percent. In Louisiana, the flat tax rate differs depending on the type of gaming facility. For example, the single commercial casino authorized in the state must pay the greater of \$60 million or 21.5 percent of the gross gaming revenues in tax, the pari-mutuel racinos are taxed at 18.5 percent, and the riverboats are taxed at 21.5 percent.

Nevada is an example of a state that has a tax on each gaming device or table. The per-game or table tax is on top of the gaming tax on gross receipts. Each gaming device is taxed twice at \$250 per year and \$20 per quarter. The tax rate for the table games depends on the number of tables at the facility. One table is taxed at \$100 per year but 16 tables are taxed at \$16,000 per year. In 2009, Nevada generated over \$70 million in device or table taxes. South Dakota also charges a device fee. Instead of multiple fees per year like Nevada, South Dakota casinos must pay an annual license fee of \$2,000 per device. In FY 2008-2009, the device fee in South Dakota generated \$7.5 million, while the gaming revenue generated \$8 million in gaming taxes.

The revenues generated by gaming are as diverse as the tax structures and rates. In some cases, it appears that the number of authorized licensees and the amount of competition has had an impact on the tax rate and the amount of tax revenue generated.⁶⁵ Colorado, one of the states with the highest number of casinos (currently over 40 casinos), and one of the highest graduated tax structures (taxed up to 40 percent), only generated \$101 million in tax revenue in 2009. Louisiana generated over \$500 million in taxes in fiscal year 2008-2009 from a single commercial casino, four slots-only racinos, and 15 riverboat casinos with tax rates that ranges as high as 21.5 percent. Nevada, a state with hundreds of casinos and one of the lowest tax rates, generated over \$600 million in taxes from gross gaming revenues in 2009 and more than \$70 million in device taxes. According to the Nevada Resort Association, Nevada's hotel-casino resort industry, as a whole, pays more than \$1.3 billion in taxes and fees each year.⁶⁶

Pennsylvania, with only 14 authorized casinos,⁶⁷ has the highest flat tax rate of 55 percent. Pennsylvania's table games began operation in July 2010 and are taxed at 16 percent. According to the Pennsylvania Gaming Control Board, the tax rate is high because the intention of the gaming law was to increase revenues for the state.⁶⁸ In FY 2009-2010, the state generated over \$1 billion dollars in tax revenue, 34 percent of which is earmarked to offset property taxes. In July 2010, the month that table games first began operation, the taxes generated from slot machine gaming rose 18 percent from the prior year. The state received more than \$110 million dollars in tax revenue for the single month of July 2010.⁶⁹

⁶³ Riverboats in Indiana may pay a flat tax of 22.5 percent if the boat has "flexible scheduling," i.e., the riverboat is permanently moored. Currently, all of Indiana's riverboat casinos are permanently moored and do not offer cruises.

⁶⁴ According to a representative for the Iowa Racing and Gaming Commission, the rationale for the different taxation rates was one of political compromise. In Iowa, riverboat casinos have a lower tax rate because riverboat casinos were authorized before the racinos.

⁶⁵ See http://www2.dothaneagle.com/news/2010/mar/16/gaming_taxes_vary_by_state-ar-185425/, which suggests that competition directly impacts the taxation rate of the state. (Last visited August 26, 2010).

⁶⁶ See <http://www.nevadaresorts.org/docs/benefits/> (Last visited August 26, 2010).

⁶⁷ Pennsylvania authorized slot machine gaming in 2004. Table games were authorized and available beginning in July 2010.

⁶⁸ *Pennsylvania collects more in casino taxes than any other state*, PressofAtlanticCity.com, July 26, 2010. (Last Visited August 26, 2010).

⁶⁹ The figures do not include table game tax revenues because the information was not available.

7. State Regulatory Agency

This section discusses how the casino-gaming states structure their regulation of gaming, i.e., whether the state uses one or more state agencies to regulate pari-mutuel facilities and commercial casinos, and to provide oversight of the state's Indian casinos.

Most of the states perform their regulatory functions through separate state agencies for racing, casino gaming, and to oversee Indian gaming. Iowa, Kansas, Michigan, Nevada, and South Dakota are the only states that combine all their gaming and pari-mutuels regulation and enforcement responsibilities into one agency. Michigan, Nevada, and South Dakota also include their oversight responsibilities under the states' Indian gaming compact in the same agency that is responsible for the regulation of the commercial casinos and the pari-mutuels.⁷⁰

All of the states with commercial casinos and racinos⁷¹ provide for the regulation of the casino operations at the racino facilities by the same agency responsible for casino regulation and not by the pari-mutuel regulator.

An important consideration in the regulation of different gaming activities by a single agency is whether to separate the enforcement functions within the agency. Of the five states with a single agency for the regulation of all casino gaming and pari-mutuels in the state, Iowa is the only state that does not separate its enforcement activities within that agency. For example, some of Iowa's pari-mutuel inspectors (known as "stewards") also perform as on-sight inspectors (known as "gaming representatives") at the casinos.

In Florida, the regulation and enforcement of pari-mutuel and racino slot machine activity, and the oversight of Indian gaming are all performed by the division. The division's Office of Slot Operations separates the division's racino slot machine enforcement responsibilities from its pari-mutuel enforcement responsibilities. The division's oversight responsibilities under the compact are also performed by division personnel who are not involved in the division's pari-mutuel and racino slot machine regulation and enforcement functions. The division's use of personnel who only perform the division's duties under the compact is intended to address the Tribe's concern that the division's regulatory approach to pari-mutuel and racino issues might conflict with the non-regulatory, oversight duties under the compact. In addition to separate regulatory goals, a division of duties within an agency may allow the regulators to better utilize the knowledge of the personnel and establish a more focused area of expertise.

According to a representative for the Michigan Gaming Control Board, the advantage of having separate personnel for the pari-mutuel wagering regulation and casino regulation is that the personnel develop and focus on a single area of expertise. According to the division, another advantage of separating the regulatory and enforcement functions is that the agency can assure that the fees and taxes paid for one activity are not used to regulate another activity, e.g., to ensure that pari-mutuel fees and taxes are used only for the regulation of pari-mutuel activities and not to supplement the regulation of the racino operations.

An additional consideration in the expansion of gaming and the regulation of different gaming activities is whether to create a separate gaming commission⁷² dedicated to the regulation of casino gaming, and whether to remove the regulation of gaming, including the regulation of racino operations, from the Department of Business and Professional Regulation.⁷³ Eleven of the 13 gaming states have independent gaming commissions or boards. Two states, Colorado and Illinois, have racing boards or divisions within each state's department of revenue. An advantage to removing the regulation of gaming from the department may be that a separate commission could be solely focused on gaming activities, regulations, and revenue collection.

⁷⁰ Eight of the 13 states with commercial casinos (Colorado, Iowa, Kansas, Louisiana, Michigan, Mississippi, Nevada, and South Dakota) have compacts for Class III casinos in the state with at least one Indian Tribe.

⁷¹ Five states authorize racinos and commercial casinos: Indiana, Iowa, Kansas, Louisiana, and Pennsylvania.

⁷² Senator Jeremy Ring (D-32) introduced SB 1126 during the 2008 Regular Legislative Session that would have transferred regulation of gaming in the State of Florida to a new Department of Gaming Control. The bill was temporarily postponed under Rule 2.33 and the bill died in the Senate Committee on Regulated Industries.

⁷³ Prior to 1992, the pari-mutuel industry in Florida was regulated by the Florida State Racing Commission. The commission was eliminated by ch. 92-348, L.O.F.

Another consideration is whether the state should use an independent commission to review and select applicants for a casino license. The agency that reviews and selects applicants for a casino license can be a separate agency from the regulator and enforcer of the activity. For example, in Kansas, the Lottery Gaming Facility Review Board within the Kansas Lottery Commission is responsible for the review and selection of casino manager applicants even though the Kansas Lottery Commission is responsible for the oversight and regulation of the casinos.⁷⁴

8. Other Regulations

In addition to licensing casino operators, states with commercial casinos also license other casino or gaming professionals and activities. States with commercial casinos may also license and regulate the manufacturers and distributors of gaming equipment and supplies, and casino employees. The casinos typically license or regulate the employees who are directly involved in the gaming activity or who handle money. For example, Pennsylvania requires a license for gaming employees, including cashiers, count room personnel, slot attendants, security and surveillance personnel, and dealers or croupiers. Pennsylvania also requires the registration of non-gaming employees whose job duties require the employee to be in or near a gaming or restricted area but whose duties do not require day-to-day interaction with gaming equipment or gaming revenues, e.g., waiters and waitresses, bartenders, food and beverage cashiers, janitorial personnel, and valet parkers.

Currently, Florida requires that the following persons and entities be licensed in the slot racinos:

- General employees who have access to the slot machine gaming area, including food service, maintenance, and other similar service and support employees;
- Any person, proprietorship, partnership, corporation, or other entity that is authorized by a slot machine licensee to manage, oversee, or otherwise control daily operations as a slot machine manager, a floor supervisor, security personnel, or any other similar position of oversight of gaming operations;
- Any person who is not an employee of the slot machine licensee and who provides maintenance, repair, or upgrades or otherwise services a slot machine or other slot machine equipment;
- Any slot machine management company or company associated with slot machine gaming;
- Any person who manufactures, distributes, or sells slot machines, slot machine paraphernalia, or other associated equipment to slot machine licensees; and
- Any company that sells or provides goods or services associated with slot machine gaming to slot machine licensees.⁷⁵

Every state with commercial casinos also provides a program for voluntary self-exclusion, which is a program that allows a person to request to be banned from all casino gaming activities. The ban includes a prohibition from collecting winnings, recovering any losses, or accepting any complimentary gifts or services or any other thing of value at any licensed facility.

States can also require the casinos to donate to compulsive gaming programs or to take other actions to protect against compulsive gambling problems. For example, in Louisiana, the casino is required to include the toll-free number for the National Council on Problem Gambling or a similar toll-free number on any advertisement for gaming or for the casino. Ohio, a state that recently authorized four casinos, constitutionally mandates that two percent of the tax on gross casino revenues must be used to fund a state run problem gambling and addictions fund for treatment and research of gambling and substance abuse addictions.

Currently, Florida requires the racinos and the Tribe to contribute \$250,000 per year per facility to a compulsive or addictive gambling prevention program.⁷⁶ In addition to this donation, the racinos and Tribe are also required to

⁷⁴ The Kansas Lottery also owns the casinos (known as “lottery gaming facilities” or “lottery gaming enterprises”) but the casinos are managed by lottery gaming facilities managers.

⁷⁵ Section 551.107, F.S.

⁷⁶ See, s. 551.118(3), F.S., relating to the compulsive or addictive gambling prevention program for the racinos in Miami-Dade and Broward counties and part XI.,D., *Gaming Compact, supra* at n. 30.

train their employees on recognizing problem situations and implementing responsible practices.⁷⁷ The compulsive or addictive gaming prevention program for the racinos must also advertise responsible gaming inside the casino and publicly as well as make available a public help line.⁷⁸ The Tribe's \$250,000 donation, as required by the compact, is made to the Florida Council on Compulsive Gambling, which operates a 24-hour toll-free helpline for compulsive gaming.⁷⁹ If casinos were authorized in the state, similar mandates and requirements to help prevent and treat compulsive gambling disorders could be instituted.

F. Perspectives on Casino Models

This section discusses the casino companies' recommendations on how Florida could establish casinos based on their experience with casino models in other states. The casino companies view the factors of tax rates, up-front fees, and the number and location of casinos as closely related and that any decision regarding whether to bid on a casino license, or the amount of any up-front capital investment for such a development, would not likely be based on any single factor.

Boyd Gaming Corporation (Boyd) opined that there are two different models for casinos. The first model is based on a low tax rate, preferably less than 10 percent. In this model, the low tax rate allows for a higher capital investment, a larger resort-style casino development, and the creation of more jobs. This is the model used in Mississippi, Nevada, and New Jersey. According to Boyd, this model requires a concentration of casinos within a limited area. The second model is based on a high tax rate and requires a distribution of casinos across the state with each casino having a monopoly within its geographical area. Although the first model creates more competition for the casino licensees, Boyd contends that it may be the best option for the state if the goal is job creation, additional state revenue, and generating regional tourist traffic.

In contrast, the Las Vegas Sands Corporation (Sands) stated that the state should not be compared to other states, but instead viewed as a country that will compete in the industry with other countries. Sands is a proponent of a low tax rate for the purpose of creating one or more multi-billion dollar integrated destination resort casinos. A destination casino is defined as a casino development that includes hotels, restaurants, retail outlets, convention space, and other commercial attractions. According to Sands, the majority of the infrastructure will be non-gaming, and the resort should have a lower tax rate as a result.

Wynn Resorts, Ltd., (Wynn) stated that Florida may be one of the few markets in the United States that could support a casino destination resort. Wynn believes that the state should look towards Nevada for a successful gaming model. In addition, Wynn stated that destination casinos should be located near population centers and near international airports to have the best chance of success. Wynn maintains that, because Florida is already a gaming state and has racinos and tribal casinos in play, commercial casinos would need a lower tax rate relative to the existing gaming opportunities, e.g., the racinos and the tribal casinos, to attract investors.

If commercial casinos were authorized for Miami-Dade and Broward counties, the casino companies contend that the South Florida gaming market is already saturated with eight pari-mutuels, five racinos, and three Seminole casinos. A new casino in Miami-Dade or Broward counties would be the ninth casino for that area. All three

⁷⁷ Section 551.118(1), F.S., and part V.,D., *Gaming Compact, supra* at n. 30.

⁷⁸ Section 551.118(2), F.S.

⁷⁹ The Florida Council on Compulsive Gambling is a not-for-profit organization that provides information, resource referrals, and support services for problem gamblers, their families, employers and others. They offer professional training for mental health, addiction and medical practitioners, gambling operators, governments, businesses, academia, law enforcement authorities, faith based organizations, employers, and others. They offer specialized programs for employers; medical, mental health, and addiction professionals; active and retired military personnel; the gaming industry; and persons of all ages. Since the late 1980s, the council has operated the Florida's 24-hour toll-free Helpline (888-ADMIT-IT). The Helpline refers callers to treatment options. While some callers have insurance for professional treatment, the council also refers callers to treatment professionals that have agreed to furnish preliminary support regardless of a person's ability to pay. In the absence of state-funded treatment, the council's PATS (Preliminary Assessment and Treatment Supports) Program enables Florida residents to visit a treatment professional and undergo a preliminary assessment at no cost. In addition, all of the council's referrals are to providers who have agreed to provide services based on a client's ability to pay.

companies believe that only one additional commercial casino could be supported in the area. However, the companies contend that gaming markets could potentially support multiple casinos for locations outside of South Florida.

Regarding the number of casinos that should be authorized, the casino companies had distinct ideas. Sands believes that the state could support casino gaming if the legislation sets a limit of five casinos with each in a separate gaming market or region of the state. Wynn, without stating a specific number, agreed with the concept of establishing a limited number of casino resorts, each in a separate geographical market. However, Wynn advised that a market study would be needed to determine the location and number of casinos. Boyd believes that the casinos should be grouped together, and that the state could potentially authorize multiple casinos for one location, but the company also advised that a market study would be needed to determine the best location and optimal number of casinos. Although Sands and Wynn believe that the authorization of one casino for Miami-Dade or Broward counties would create regional and international tourist appeal, Boyd stated that the area is already a destination resort. Adding an additional casino resort with a low tax rate would only detract from the other hotels, casinos, pari-mutuels, racinos, and Seminole gaming opportunities in the area. Consequently, a South Florida-based casino is likely to mainly attract local casino players and tourists for whom South Florida is already a destination.

Regarding the tax rate, the consensus among the gaming companies is that Pennsylvania's 55 percent rate is too high and that this high rate discourages investment in casinos and discourages the creation of destination resorts around the casinos. The companies recommend a 10 percent or less tax rate to maximize the amount of capital that could be invested in the development.

Regarding the amount of any up-front licensing fees, the companies believe that high up-front fees also detract from the potential for long-term investment. The companies stressed that they view up-front fees as part of the total capital investment needed for the casino development. Therefore, as with the tax rate, the companies assert that higher up-front fees mean a lower capital investment in the casino development. The companies stressed that whether an up-front fee negatively affects the potential for development is also dependent on the tax rate, the number and location of the authorized casinos, and the level of proposed capital investment in the casino development.

Sands recommends that the tax rate and up-front fees should be contingent on the amount of the casino developers investment, i.e., the greater the investment the lower the tax rate. No other state provides a contingent rate based on the amount of the investment. It is also not clear how a contingent tax rate would function. For example, how the value of the development investment would be calculated.

Wynn recommends that the state should require a level of cash equity for any casino license applicants, and that the state should investigate the financial track record of any potential licensee in order to ensure that the proposed project is completed as promised.

Regarding the pari-mutuels, the companies provided different perspectives. One perspective is that the racinos should be permitted to offer the same games as any casino, and should not be subject to any disadvantage in terms of tax rates or other fees. The alternative perspective is that, whether the racinos are authorized to offer the same games as the casinos or to offer only slot machines, the racinos should be subject to a tax rate and up-front fees that are proportional to their investment in racino gaming. However, Boyd was critical of any model that would afford a tax rate advantage to any new casino. Alternatively, Wynn advised that the tax rates cannot be equalized because the racinos have fewer amenities and do not cost as much to operate as destination casinos.

Options and/or Recommendations

This report does not recommend the expansion of gaming. Before determining the merits of any new gaming authorization, the Legislature should first consider whether it is in the best interest of the state to expand gaming. Within the past year, the state has entered into a gaming compact with the Seminole Tribe and has implemented changes to multiple pari-mutuel cardroom and slot machine gaming laws. It may be the best policy decision to

give these gaming changes time for the Legislature to review their effect. In addition to determining the impact of the Seminole compact on the pari-mutuel industry, the state will also have more information available to determine the financial revenue impact of the compact.

If the Legislature decides to further investigate casino gaming authorization or to authorize commercial casinos, a principal consideration for the Legislature is whether the new gaming establishments would generate enough tax revenue to negate the amount of revenue sharing payments that could be lost under the terms of the state's compact with the Seminole Tribe. As discussed in this report, the amount of any reduction or cessation of tribal payments is dependent on the following preliminary policy decisions:

- Whether to limit the expansion of casinos to Broward and Miami-Dade counties; and
- Whether to limit the expansion of casino gaming to the pari-mutuels in Broward and Miami-Dade counties.

Another consideration relates to the timing of any authorization for casinos. Under the terms of the compact, the Tribe's authority to offer banked card games terminates at the conclusion of the first 5 years of the compact. At that point the Tribe and the state would have to renegotiate the compact before the Tribe could continue to offer banked card games. If the Legislature were to authorize casinos with banked card games, or any other additional games, during the first five years of the compact, the Tribe may be able continue to offer such games during the full 20-year term of the compact without renegotiating the compact during the first five years.

In addition to the potential loss of revenue under the compact, the decision to authorize additional casinos may be guided by the potential state revenue from the economic development associated with the construction and operation of the casino or casinos.

If the Legislature decides to authorize casinos beyond those currently authorized for the racinos in Broward and Miami-Dade counties and the Seminole Tribe, the following additional issues would need to be considered in any implementing legislation:

- The number and location of the casinos, which could be based on a market study conducted by an independent consultant;
- The types and number of games authorized for the casinos;
- Whether the pari-mutuel facilities, either state-wide or at the racinos in Broward and Miami-Dade counties, are authorized to offer additional games or the same games as the casinos;
- What agency or agencies would select and regulate the casinos;
- How the casino operators would be selected, e.g., would the state use a competitive application bidding process to grant casino licenses;
- The amount of any up-front casino license assessments, such as an application fee, background investigation fee, and license fee;
- The criteria or qualifications for the granting of a casino license, including whether the applicant for a casino license should guarantee a minimum investment for the development of the casino and whether the casino applicant should be required to make any direct payment to the state beyond any up-front license assessments, and the amount for any such guarantee or payment;
- The tax rate for the casino revenue, including whether the tax rate should be contingent on the amount of a casino operator's financial investment in the construction and operation of the casino;
- Whether additional assessments should be provided, including admission fees by patrons of the casino and assessments by local governments, and the amount of any such assessment;
- The extent of any license requirement or other regulation of employees or other persons or business entities involved in the operation of the casinos; and
- The extent of the casinos' responsibilities regarding compulsive gaming programs, including any financial obligations.

REVIEW OF INTERNET POKER: ISSUE BRIEF 2011-2023

By: Patrick L. “Booter” Imhof and Ashley Young

Overview:

- Florida Laws
- Unlawful Internet Gambling Enforcement Act Of 2006
- Other Federal Statutory Provisions that may affect Internet Poker and Gaming
- International Gambling Laws
- Legislative Proposals to Legalize Internet Poker
- Impact of Legalizing Internet Poker on the Seminole Indian Gaming Compact

Internet Poker

- Internet poker is a game of poker that is played via the internet instead of at a traditional casino or pari-mutuel facility.

Florida Laws:

- Gambling is generally prohibited in Florida.
 - ▣ Section 849.08, F.S.
- Poker is authorized to be played in Florida as a penny-ante game or in a cardroom located at a licensed pari-mutuel facility (however, the game must be played in a non-banking manner).
 - ▣ Section 849.085, F.S.
 - ▣ Section 849.086, F.S.

Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)

- UIGEA does not make Internet Gambling illegal.
- Instead, the act targets financial institutions in an attempt to prevent the flow of money from individuals to an Internet Gaming Company.
- UIGEA is not to be construed as altering, limiting, or extending any federal or state law or any Tribal-State Compact prohibiting, permitting, or regulating gambling within the United States.

Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)

- **UIGEA does not prohibit Intrastate gambling that is legal under the applicable state law.**
 - ▣ However, the applicable state law must include means of ensuring that the game occurs entirely within the boundaries of an individual state.

UIGEA Definitions:

- Unlawful Internet Gambling
 - ▣ “Means placing, receiving, or transmitting a bet or a wager, via the Internet, where any Federal, state, or tribal law makes such an action unlawful.” 31 U.S.C. s. 5362(10)(A).
 - ▣ “Unlawful Internet gambling does not include a bet or a wager initiated and received within a single state (intrastate transactions), if such a transaction is authorized by state law and that law requires age and location verification as well security that ensures the age and location requirements are met.” 31 U.S.C. s. 5362(10)(B).

UIGEA and Tribal Compacts

- An Intra-tribal transaction is a transaction made on the land of one tribe or between the land of one tribe to the land of another tribe.
- Such transactions are allowed under UIGEA if they are allowed under the Indian Gaming Regulatory Act, applicable tribal ordinances, and any state-tribal gaming compact.

UIGEA: Regulations

- The Secretary of the Treasury and the Board of Governors of the Federal Reserve, in consultation with the Attorney General, are given the power to make regulations requiring financial institutions to block certain transactions.
- The rules and regulations went into full effect until June of 2010.

UIGEA: Remedies

- Exclusive jurisdiction over cases arising under this Act is given to the Federal District Courts.
- The United States Attorney General, or an individual state Attorney General, are given standing to bring a suit against a company to restrain or prevent restricted transactions.
- The enforcement authorities named in the applicable state-tribal compact are also given standing to bring suit in the case of a violation with respect to Indian lands.

UIGEA: Relevant Case Law

- There has only been one formal challenge against UIGEA.
- *Interactive Media Entertainment and Gaming Ass'n Inc. v. Attorney General of the United States* 580 F. 3d 113 (3rd Cir. 2009).
- The Court rejected the contention that the language of UIGEA is vague or that there is a right to privacy issue involved in the playing of internet poker.

The World Trade Organization and Internet Gambling

- In 2004, Antigua challenged three of the United States' laws that affect internet gambling
 - ▣ Wire Act of 1961
 - ▣ Travel Act of 1961
 - ▣ Illegal Gambling Business Act of 1970

The World Trade Organization and Internet Gambling

- In 2005, the WTO held that these laws were a violation of the General Agreement on Trade in Services (GATS), which the United States is a party to.
- As a part of this decision, the WTO instituted a timeline for the United States to fix the laws in order to be in compliance with GATS
 - ▣ The United States has ignored this timeline.

The World Trade Organization and Internet Gambling

- The WTO maintains that regulation of Internet gaming would be inconsistent with the previous authorization of interstate horseracing, which also relies on the internet to work.
- The WTO decision ordered the United States to repeal its Internet gambling restrictions or repeal the Interstate Horseracing Act.

Other Federal Statutory Provisions that may affect Internet Poker and Gaming

- Wire Act of 1961
- Travel Act of 1961
- Racketeer Influenced and Corrupt Organizations Act of 1970 (RICO)
- Amateur and Professional Sports Protection Act of 1992
- Money Laundering Control Act of 1986
- Transportation of Gambling Devices Act of 1951
- Interstate Transportation of Wagering Paraphernalia Act
- Illegal Gambling Business Act

International Internet Gambling Laws

- Some countries actively participate in Internet gaming by running state owned websites.
- Others license and regulate such activities.
 - Alderney, Antigua, Antilles, Austria, Barbuda, Belize, Costa Rica, Curacau, Dominica, Gibraltar, Isle of Man, Italy, Kahnawake, Malta, Netherlands, Panama, St. Kitts and Nevis, Sweden, United Kingdom, and Vanuatu.
- Still others completely ban internet gaming.

International Internet Gambling Laws

- In September of 2010, the European Court of Justice upheld the right of European Union Member States to regulate, at their discretion, games of chance, including those games played over the internet.
- The European Union does retain the right to oversee the regulations and ensure that the regulations are proportionate to public policy concerns.

Proposed Florida Legislation

- Representative Joseph Abruzzo introduced HB 1441 during the 2010 Regular Legislative Session.
- The bill would have allowed for the playing of non-banked, intrastate poker via the internet.

Proposed Florida Legislation

- It provided that the state would contract with an internet poker company and that they would in turn create a hub in the state and the licensed cardrooms would then operate websites that acted as a portal to the state's poker network.
- The bill died when it was not taken up on the Business & Financial Affairs Committee.

Proposed Florida Legislation

Revenue Estimating Conference

- First Year - \$7.2 million
- Second Year – \$31.8 million
- Third Year - \$46.7 million
- Fourth Year - \$56.3 million

Proposed Florida Legislation

- Rep. Abruzzo has filed HB 77 for the 2011 Regular Session.
- No companion Senate Bill at this time.

Proposed Federal Legislation

- Representative Barney Frank introduced H.R. 2267 in the 111th Congress. It passed committee and was placed on the House Calendar. Senator Menendez introduced a related bill, S 1597 that was not heard.
- The bill would provide for the licensing on internet gambling, and would make it illegal to operate an internet gambling company within the borders of the United States without a license.
- The bill would also amend UIGEA.

Proposed Federal Legislation

- The Congressional Budget Office estimated the bill would increase revenues by \$971 million and direct spending by \$688 million from 2011-2020.
- Neither Rep. Frank's bill nor a proposal submitted by Senator Reid during the lame duck session passed.

Other State Legislation

- California has introduced legislation dealing with Intrastate Internet Poker.
- New Jersey has introduced legislation dealing Intrastate Internet Gambling, including poker.

Proposed California Legislation

- S.B. 1485 was introduced in the California State Senate during the 2009-2010 Regular Session.
- The bill provided for the state to contract with companies to operate up to three hubs for legal internet poker.
- The hub operators would pay a tax of 10% of their gross revenues to the State.
- The legislation died upon adjournment of the session.

Proposed California Legislation

- Two bills have been introduced during the current biennial Regular Session.
- SB 40 by Senator Correa and SB 45 by Senator Wright.
- Neither bill has been referred to committee yet.

Proposed New Jersey Legislation

- Senate Bill 490 was introduced in the New Jersey Senate
- Authorize the eleven major casinos in Atlantic City to establish intrastate Internet gambling websites.
- The bill gives the authority to oversee the websites to the New Jersey Casino Control Commission.
- Any casino with a valid license would be allowed to apply for a permit.

Proposed New Jersey Legislation

- SB 490 was passed by the New Jersey Senate and was amended in a New Jersey Assembly committee.
- The bill as amended in the Assembly, provides for a 8% tax on the gross revenues collected
- Currently the bill is on 2d Reading in the Assembly.

Impact of Legalizing Internet Poker on the Seminole Indian Gaming Compact

- The legalization of Internet Poker may affect the Compact
- If the state affirmatively allows Internet Gambling, and the Tribe's net win drops by more than 5% from the previous 12 months, the Tribe would no longer be required to make the Minimum Guaranteed Payments.
- The Tribe would still be required to make payments based on the Percentage Revenue Share Amount.

Impact of Legalizing Internet Poker on the Seminole Indian Gaming Compact

- Under the Compact the Tribe may conduct any game authorized in Florida.
- If the Tribe conducts Internet poker, then there would be no reduction in payments.



Questions?



The Florida Senate

Issue Brief 2011-223

October 2010

Committee on Regulated Industries

REVIEW OF INTERNET POKER

Statement of the Issue

The purpose of this issue brief is to provide an overview of the relevant state, federal, and international laws that pertain to Internet poker. It also explores proposed legislation at the state and federal level.

Internet poker is a game of poker played over the Internet or online instead of at a traditional casino or pari-mutuel facility. In 2009, proposed federal legislation sought to legalize Internet poker. In addition, multiple states, including Florida, proposed legislation to legalize intrastate poker. During the 2010 Regular Session, Representative Joseph Abruzzo (D-85) introduced HB 1441 to authorize intrastate Internet poker, regulate the operation of the games, and tax the operators. The bill died in the House Insurance, Business, & Financial Affairs Policy Committee. Senator Dennis L. Jones (R-13) introduced SB 1582 that provided legislative intent to revise the laws relating to poker. That bill was never heard and died in the Senate Committee on Regulated Industries.

Congress enacted the Unlawful Internet Gambling Enforcement Act (UIGEA) in 2006. The act amends the federal criminal code to prohibit persons engaged in the business of betting or wagering from knowingly accepting proceeds of financial transactions in connection with unlawful Internet gambling.

Discussion

Florida Laws

Gambling is generally prohibited in Florida. Section 849.08, F.S., provides that any person who plays or engages in any game of “cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.”¹ Section 849.01, F.S., provides that it is a felony of the third degree for a person to maintain a gambling location for the purpose of gaming or gambling.²

Poker is “a card game, the most popular of a class of games called vying games, in which players with fully or partially concealed cards make wagers into a central pot, after which the pot is awarded to the remaining player or players with the best combination of cards.”³ There are many variants of the game, but the most commonly played games are five-card stud, seven-card stud, and Texas hold ‘em.⁴

Poker is authorized to be played in Florida as a penny-ante game under s. 849.085, F.S., or in a cardroom located at a licensed pari-mutuel facility as provided in s. 849.086, F.S.

¹ As provided in ss. 775.082 and 775.083, F.S., respectively, a second degree misdemeanor carries a term of imprisonment not to exceed 60 days and a fine not to exceed \$500.

² As provided in ss. 775.082 and 775.083, F.S., a third degree felony carries a term of imprisonment not to exceed 5 years and a fine not to exceed \$5,000.

³ See the definition of poker at wordiQ.com (available at <http://www.wordiq.com/definition/Poker>, last visited, September 21, 2010).

⁴ *Id.*

A “penny-ante game” is a game or series of games of “poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg in which the winnings of any player in a single round, hand, or game do not exceed \$10 in value.”⁵ It must be played in a dwelling, no admission or fee may be charged, no player may be solicited by advertising, a person must be at least 18 years old to play, and any debt incurred is unenforceable.⁶

A “dwelling” is defined as a residential premise that is owned or rented by a participant in the game. It includes “the common elements or common areas of a condominium, cooperative, residential subdivision, or mobile home park of which a participant in a penny-ante game is a unit owner, or the facilities of an organization which is tax-exempt under s. 501(c)(7) of the Internal Revenue Code.”⁷ It also includes a college dormitory or common recreational area of the college dormitory, and a community center owned by a municipality or county.

Poker may also be played in a cardroom.⁸ A cardroom is a facility where authorized games are played for money or anything of value and the public is invited to participate in the games and is charged a fee by the facility operator.⁹ The operator must be a pari-mutuel permitholder which holds a valid permit and license under ch. 550, F.S., and holds a valid cardroom license issued by the Division of Pari-mutuel Wagering (division) within the Department of Business and Professional Regulation (department).¹⁰

An authorized game for a cardroom is poker or dominoes played in a nonbanking manner.¹¹ A banking game is a game in which the house is a participant.¹² Banked card games are illegal in Florida.¹³ The cardrooms can be open a total of 18 hours per day on Monday through Friday and 24 hours on Saturday, Sunday, and holidays.¹⁴ The cardroom operator may limit the amount wagered in any game or series of games. Otherwise, there is no other betting limitations.¹⁵

Poker conducted in a non-banking manner is considered a Class II game¹⁶ under the Indian Gaming Regulatory Act, 25 U.S.C. s. 2701, et seq.¹⁷ An Indian Tribe may conduct poker on Indian Land if the card games are explicitly authorized by the law of the state where the Tribe is located. The card games must be conducted in compliance with any state laws or rules regarding hours of operations and wagers or pot sizes.¹⁸ In addition to the poker games authorized under ch. 849, F.S., the tribal-state compact, ratified by the Florida Legislature in the 2010 Regular Session,¹⁹ allows the Seminole Tribe of Florida to conduct Class III banked card games²⁰ at all of their gaming facilities except the Seminole Indian Casinos at Brighton and Big Cypress.²¹

⁵ Section 849.085(2)(a), F.S.

⁶ Section 849.085(3), F.S.

⁷ Section 849.085(2)(b), F.S.

⁸ Section 849.086(3), F.S.

⁹ Section 849.086(2)(c), F.S.

¹⁰ Section 849.086(2)(f), F.S. Twenty-three pari-mutuel facilities have licensed cardrooms.

¹¹ Section 849.086(2)(a), F.S.

¹² Section 849.086(2)(b), F.S. The “house” is defined as a cardroom operator and all employees of the cardroom operator under s. 849.086(2)(j), F.S.

¹³ *Florida House of Representatives v. Crist*, 999 So.2d 601 (Fla. 2008). Examples of banked card games are blackjack, baccarat, and chemin de fer.

¹⁴ Section 849.086(7)(b), F.S.

¹⁵ Section 849.086(8)(b), F.S. Prior to the effective date of ch. 2009-170, L.O.F., the maximum bet could not exceed \$5 and no more than three rounds of betting. A cardroom operator could conduct games of Texas hold ‘em without a betting limit if the player’s buy-in was no more than \$100. That amendment was effective on July 1, 2010. *See* s. 5, ch. 2010-29, L.O.F.

¹⁶ Class II games include bingo (including electronic, computer, or other technologic aids used in connection with the games) and non-banked card games. *See* 25 U.S.C. s. 2703(7)(A).

¹⁷ The Indian Gaming Regulatory Act is the framework for the operation of gaming by Indian tribes. *See* 25 U.S.C. s. 2702.

¹⁸ 25 U.S.C. s. 2703(7)(A)(ii).

¹⁹ *See* s. 1, ch. 2010-29, L.O.F.

²⁰ Class II gaming does not include banked card games or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind. *See* 25 U.S.C. s. 2703(7)(B). Class III gaming is gaming that is not Class II. *See* 25 U.S.C. s. 2703(8).

²¹ *Gaming Compact between the Seminole Tribe of Florida and the State of Florida*, part II.F.2., approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. The authorized facilities include the Seminole Casinos at Coconut Creek, Hollywood, and Immokalee, and the Seminole Hard Rock Hotel and Casinos at Hollywood and Tampa.

Unlawful Internet Gambling Enforcement Act of 2006

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) was signed into law by President George W. Bush on October 13, 2006.²² The Unlawful Internet Gambling Enforcement Act does not make Internet gambling illegal. Instead the act targets financial institutions in an attempt to prevent the flow of money from an individual to an Internet gaming company because most owners and operators of such sites are located overseas, outside of the jurisdiction of the United States.

The act finds that “[n]ew mechanisms for enforcing gambling laws on the Internet are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling.” It declares that nothing in the act may be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.

The act does not prohibit intrastate Internet gambling as long as the bet or wager is initiated or received within the state. According to the Poker Voters of America, this provision would allow Internet poker sites in Florida as long as the servers are located within the state.²³

Definitions in the Act

The act defines “financial transaction provider” as “a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network.”²⁴

The act states that a “restricted transaction” is “any transaction or transmittal involving any credit, funds, instruments, or proceeds” that are described in §5363 of the act,²⁵ where the recipient is not permitted to accept the transaction under the language of §5363.²⁶

“Unlawful Internet gambling” means placing, receiving, or transmitting a bet or a wager, via the Internet, where any Federal, state, or tribal law makes such an action unlawful.²⁷ Unlawful Internet gambling does not include a bet or a wager initiated and received within a single state (intrastate transactions), if such a transaction is authorized by state law and that law requires age and location verification as well security that ensures the age and location requirements are met.²⁸

An intra-tribal transaction is a transaction that is made and received on the tribal land of a single Tribe or from the land of one tribe to another, if the transaction is allowed under the Indian Gaming Regulatory Act.²⁹ The transaction must comply with applicable tribal ordinance as well as any tribal-state gaming compact agreement.³⁰ Finally, intra-tribal transactions must also utilize the same kinds of regulations to verify age and location as the states are required to have in order to be compliant with the act.³¹

²² The provisions of UIGEA were adopted in Conference Committee as an amendment to H.R. 4954 by Representative Daniel E. Lungren (CA-3), “The SAFE Ports Act of 2006.”

²³ Presentation by Melanie Brenner, Executive Director of Poker Voters of America before the Florida Senate Committee on Regulated Industries, February 16, 2010 (presentation on file with the committee).

²⁴ 31 U.S.C. s. 5362(4).

²⁵ Section 5363 provides the prohibition on acceptance of any financial instrument for unlawful Internet gaming.

²⁶ 31 U.S.C. s. 5362(7).

²⁷ 31 U.S.C. s. 5362(10)(A).

²⁸ 31 U.S.C. s. 5362(10)(B).

²⁹ 31 U.S.C. s. 5362(10)(C)(i)(I-II). *See* 25 U.S.C. s. 2701 et seq.

³⁰ 31 U.S.C. s. 5362(10)(C)(ii).

³¹ 31 U.S.C. s. 5362(10)(C)(iii).

Regulations and Remedies under the Act

The act provides that within 270 days of the enactment of the bill, the Secretary of the Treasury and Board of Governors of the Federal Reserve System in consultation with the Attorney General, are to prescribe regulations requiring financial institutions to block those restricted transactions.³²

The act also provides civil remedies for violations. The section grants original and exclusive jurisdiction to the United States District Courts.³³ It provides that the United States Attorney General or an individual state's Attorney General (or other appropriate state official) may bring an action to restrain or prevent a restricted transaction and the court may issue a temporary restraining order, a preliminary injunction, or an injunction against any person in order to restrain a restricted transaction.³⁴ It is in the court's discretion to impose a permanent injunction, preventing the person from "placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting the placing of bets or wagers."³⁵ Any enforcement authorities specified in an applicable Tribal-State Compact are given enforcement authority of the provision according to the provisions of the Compact with respect to Indian lands.³⁶ The act specifically states that nothing within the act is to be "construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act."³⁷

The relief is limited to removing access to or blocking access to websites or hyperlinks to websites that are in violation of the act. The relief cannot impose an obligation on an interactive computer service to monitor for violations, it will only apply to the specified interactive computer service, and must specifically identify the location of the website or hyperlink that is to be removed or disabled.³⁸ An interactive computer service that is not in violation of this section will not be held liable under 18 U.S.C. s. 1084(d), unless the service manages, operates, owns, or is owned by a company that operates a site where such wagering or betting takes place.³⁹ Section 5366 provides that any person guilty of violating s. 5363⁴⁰ can be fined, imprisoned for not more than five years, or both.⁴¹

Finally, the act provides that any interactive computer service, financial transaction provider, or telecommunications service provider may be liable if there is actual knowledge and control of bets or wagers on an Internet website.⁴²

Status of UIGEA rules by Federal Reserve and US Treasury

In October of 2007 the Department of the Treasury and the Board of Governors, in consultation with the Attorney General published the proposed rule in the Federal Register and asked for public comment on the proposed rule. After considering all of the comments, the final rule was to be effective December 2009 and was published in the Federal Register in November of 2008. Implementation was delayed however, and the full rule was not effective until June 2010.

Relevant Case Law on UIGEA

There has been one major legal challenge to UIGEA in Federal Court. In *Interactive Media Entertainment and Gaming Ass'n Inc. v. Attorney General of the United States*,⁴³ the plaintiff, Interactive Media, challenged UIGEA on the basis that the law was void for vagueness "because the phrase 'unlawful internet gambling' lacks an 'ascertainable and workable definition.'"⁴⁴ The court ruled that the act is not vague, and provides the average person with "adequate

³² 31 U.S.C. s. 5364.

³³ 31 U.S.C. s. 5365(a).

³⁴ 31 U.S.C. s. 5365(b)(1).

³⁵ 31 U.S.C. s. 5366(b).

³⁶ 31 U.S.C. s. 5365(b)(3)(A).

³⁷ 31 U.S.C. s. 5365(b) (3)(B).

³⁸ 31 U.S.C. s. 5365(c)(1).

³⁹ 31 U.S.C. s. 5365(c)(2).

⁴⁰ See n. 25 *supra*.

⁴¹ 31 U.S.C. s. 5366(a).

⁴² 31 U.S.C. s. 5367.

⁴³ 580 F.3d 113 (3rd Cir. 2009).

⁴⁴ *Id.*

notice” of what is prohibited.⁴⁵ The court also stated that “a statute is not unconstitutionally vague merely because it incorporates other provisions by reference; a reasonable person of ordinary intelligence would consult the incorporated provisions.”⁴⁶ The plaintiff also challenged UIGEA on a theory that UIGEA violates the right of an individual to engage in gambling or gambling activities in the privacy of their own home.⁴⁷ The court, however, did not agree that gambling within an individual’s home is a right to privacy issue. It stated that “[g]ambling, even in the home, simply does not involve any individual interests of the same constitutional magnitude [as previous right to privacy cases have involved].”⁴⁸

World Trade Organization Dispute

The General Agreement on Trade in Services (GATS), a treaty which the United States is a party to and is enforceable by the World Trade Organization (WTO),⁴⁹ includes an agreement for “entertainment services.” In 2004, Antigua challenged three of the United States’ gambling laws before the WTO.⁵⁰ The challenged laws included the Wire Act of 1961, the Travel Act of 1961, and the Illegal Gambling Business Act of 1970.⁵¹ In 2005, the WTO held that the gambling industry must comply with WTO agreements and that any attempt to block this compliance by the United States is a violation of the nation’s obligations under GATS.⁵² The decision by the WTO provided the United States with a timeline to amend its laws to its obligations under the WTO. In April of 2006, that timeline ended without the United States addressing the WTO’s decision.⁵³ As a result of this decision, the view of the WTO is that any regulation having an effect on gambling be viewed with scrutiny. The General Agreement on Trade in Services allows for limited regulation based on issues of public morality but the WTO views themselves as the arbiters of what regulation serves that purpose and is justified. The WTO maintains that regulation of Internet gaming would be inconsistent with the previous authorization of interstate horseracing,⁵⁴ which relies on the Internet to work. The decision ordered the United States to repeal its Internet gambling restrictions or repeal the Interstate Horseracing Act.

Other Federal Statutory Provisions that may affect Internet Poker and Gaming

Although UIGEA directly addresses Internet gaming, it is not the only federal statute which may impact Internet gambling. In fact, one of the leading experts on gambling law, I. Nelson Rose, compiled a list of other Federal Statutes that have an impact on Internet Gambling.⁵⁵

One of the most frequently cited statutes that may affect Internet gaming is the Interstate Wire Act of 1961.⁵⁶ The act provides:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ The World Trade Organization is located in Geneva, Switzerland. It states that it is the only global international organization dealing with the rules of trade between nations. The organization is based upon the WTO agreements, negotiated and signed by the bulk of the world’s trading nations and ratified in their parliaments. The organization was established on January 1, 1995 by the Uruguay Round of negotiations. As of July 23, 2008, it had 153 members. (available at http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm, last visited August 27, 2010).

⁵⁰ Public Citizen, *Case Summary: WTO Internet Gambling Case*, March 2007, (available at <http://www.citizen.org/documents/Gamblingsummary2007.pdf>., last visited August 27, 2010).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ ⁵⁴ See Interstate Horseracing Act of 1978, 15 U.S.C. s. 3001, et seq.

⁵⁵ I. Nelson Rose, *The Law of Internet Gambling Outline*, Gambling and the Law, June 15, 1999, (available at www.Gamblingandthelaw.com, last visited September 13, 2010).

⁵⁶ 18 U.S.C. s. 1084.

entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.⁵⁷

The statute prohibits the use of the Internet for ‘bets or wagers on any sporting event or contest,’ but the question remains as to whether the coverage of the Wire Act extends beyond the sporting event to other applications of Internet gambling.⁵⁸ There is further debate as to whether the Wire Act applies to the Internet at all, since it was not contemplated at the time of the act’s passage. “Despite the divergent views . . . the official position as expressed by the Justice Department [during the Clinton Administration] and several state attorneys general is to treat the Wire Act as applying broadly and covering all forms of Internet gaming.”⁵⁹

Other federal laws that may impact Internet gaming are: the Travel Act of 1961 which was part of a wide scale operation by the Department of Justice to combat organized crime in the early sixties;⁶⁰ the Racketeer Influenced and Corrupt Organizations Act of 1970, which was also directed toward the elimination of organized crime and can be construed to have an effect on Internet gambling; as well as the Amateur and Professional Sports Protection Act of 1992.⁶¹ In addition, the conspiracy statute can also apply to Internet gambling.⁶²

Professor Rose also indicates that the Money Laundering Control Act of 1986⁶³ may also apply to Internet gambling,⁶⁴ which applies to the laundering of monetary instruments and monetary transactions “involving property that is derived from some form of unlawful activity.”⁶⁵

The Transportation of Gambling Devices Act of 1951, more commonly known as the Johnson Act,⁶⁶ prohibits the shipment of gambling devices to locations where the activities conducted with the device are illegal.⁶⁷ A shipment of software or hardware for Internet gaming, may be considered a crime if it is shipped to a locale where such gaming is outlawed by state or federal law.⁶⁸ The Interstate Transportation of Wagering Paraphernalia Act⁶⁹ also prohibits the shipment of gambling devices and the sending of software or hardware across state lines to areas where Internet gambling is not legal.⁷⁰

Finally, the Illegal Gambling Business Act⁷¹ which was passed in 1970 as an effort by Congress to stop large-scale illegal gambling operations within the country,⁷² as part of the Organized Crime Control Act.⁷³ The RICO act was also part of that enactment and it complements the Illegal Gambling Business Act by imposing both civil and criminal penalties.⁷⁴

⁵⁷ 18 U.S.C. s. 1084(a).

⁵⁸ Jeffery Rodefer, *Internet Gambling in Nevada: Overview of Federal Law Affecting Assembly Bill 466*, 6 Gaming L.R. 393 (July 6, 2004).

⁵⁹ *Id.* (quoting: Adrian Goss, *Jay Cohen’s Brave New World: The Liability of Offshore Operators of Licensed Internet Casinos for Breach of United States Anti-Gambling Laws*, 7 Rich. J.L. & Tech. 32 (Spring 2001)).

⁶⁰ *Id.*

⁶¹ 28 U.S.C. ss. 3701-3704.

⁶² *Supra* at n.55.

⁶³ 18 U.S.C. s. 1956

⁶⁴ *Supra* at n.55.

⁶⁵ 18 U.S.C. s. 1956(a)(1). *See also*, Jeffery Rodefer, *Internet Gambling in Nevada: Overview of Federal Law Affecting Assembly Bill 466*, 6 Gaming L.R. 393 (July 6, 2004).

⁶⁶ 15 U.S.C. §§ 1171-1178.

⁶⁷ *Supra* at n. 58.

⁶⁸ *Id.*

⁶⁹ 18 U.S.C. s. 1953.

⁷⁰ *Supra* at n. 58.

⁷¹ 18 U.S.C. s. 1955.

⁷² *Supra* at n. 58.

⁷³ *Id.*

⁷⁴ *Supra* at n. 58.

International Internet Gambling Laws

The regulation of internet gaming varies internationally. Some countries actively participate in the Internet gaming by running online gaming websites, others license and regulate the activities, while some affirmatively ban the practice. The following jurisdictions license Internet gaming: Alderney, Antigua, Antilles, Austria, Barbuda, Belize, Costa Rica, Curacao, Dominica, Gibraltar, Isle of Man, Italy, Kahnawake, Malta, Netherlands, Panama, St Kitts and Nevis, Sweden, United Kingdom, and Vanuatu.⁷⁵

On September 8, 2010, The European Court of Justice (ECJ) issued an opinion upholding the right of European Union (EU) member states to regulate, at its discretion, games of chance. This includes granting monopolies to companies, but the regulation must be tailored to fit public policy objectives or to protect their citizens.⁷⁶ Consequently, this ruling may result in varied gambling laws within the EU and member states may not honor licenses granted by other member states Internet gaming laws.⁷⁷ However, the EU maintains the authority to oversee the regulations and ensure the regulations are proportionate to the public policy concerns.⁷⁸

Until recently, Internet gambling laws in Europe have operated in “legal limbo” with governments not sanctioning such practices but also unable to tax and regulate them.⁷⁹ Most European nations that allowed Internet gambling did so through the use of government owned sites, however, recently nations, such as France and Italy, have begun regulating other sites, permitting them to compete against the government monopolies.⁸⁰ For example, the Italian government has begun granting licenses to certain gambling businesses and imposing regulation on those businesses.⁸¹ Countries like Belgium and the United Kingdom also provide for the licensing of business to conduct Internet gaming.

Regarding whether the Internet gaming business must be located in the country, some countries, such as the United Kingdom, permit business outside the country to offer Internet gaming provided they are licensed by the country.⁸² Italy has issued permits for companies to open internet gambling sites in Italy.⁸³ These included both foreign and domestic companies but the companies and players must be located in Italy.⁸⁴ France amended its national laws to allow for regulation and taxation of foreign-based Internet casinos and sports book websites.⁸⁵

Outside of the European Union, the legal status of Internet gaming also differs widely. In South Africa, a court decision on August 20, 2010, provided that it was illegal to gamble online within the country.⁸⁶ However, the Court’s ruling also indicated that the government may be considering the legalization of online gambling by stating that, if a company violates this ruling, they will not be eligible for a license when and if South Africa begins accepting applications for such licenses.⁸⁷

⁷⁵ See Viaden Media, an online casino software company at http://www.viaden.com/products/gambling_license.html#, (last visited September 27, 2010).

⁷⁶ Erik Vollebregt, *EU Court of Justice rules that national gambling monopolies must be regulated in a consistent and systematic manner and that sanctions cannot discriminate between local and international providers*, *Interactive Gaming Council*, September 8, 2010, (available at <http://www.igcouncil.org/>, last visited September 16, 2010).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Eric Pfanner, *Two Online Gambling Operators in Europe to Merge*, *N.Y. TIMES*, July 29, 2010, (available at <http://www.nytimes.com/2010/07/30/technology/30bwin.html>, last visited September 30, 2010).

⁸⁰ *Id.*

⁸¹ *Online Gambling Regulation in Italy*, Viaden Media, (available at: http://www.viaden.com/products/italy_license.html (Last visited September 21, 2010).

⁸² United Kingdom Gambling Commission, *Gambling Sectors*, (available from <http://www.gamblingcommission.gov.uk> , last visited September 16, 2010)

⁸³ *Online Gambling in Italy*, (available at <http://gamingzion.com/italy/>, last visited September 30, 2010).

⁸⁴ Interview with Poker Voters of America, September 30, 2010.

⁸⁵ *Online Gambling in France*, (available at <http://gamingzion.com/france/>, last visited September 30, 2010).

⁸⁶ Karabo Keepile, *Online Gambling Banned in South Africa*, *Mail & Guardian Online*, August 25, 2010 (available at: <http://www.mg.co.za/article/2010-08-25-online-gambling-banned-in-south-africa>, last visited September 17, 2010).

⁸⁷ *Id.*

Internet gambling is illegal in China. The Chinese Government has increased their enforcement of the online gambling laws since January 2010, arrested over 7,360 people, and frozen around one billion yuan or \$148 million.⁸⁸ Internet gambling is also illegal in Japan.⁸⁹

Regarding the effect of legalized Internet gaming, critics of Australia's regulation of Internet gambling through its Interactive Gambling Act of 2001 (IGA) have noted importance of enforcement. The legislation's critics maintained that the prohibition did not reach its desired goal because, instead of preventing the use of Internet gambling, it has forced citizens playing such games to use offshore sites because there was no real enforcement mechanism put in place by the act.⁹⁰ For example, the critics have argued that the act is unenforceable internationally and is being ignored by operators outside of Australia.⁹¹

Legislative Proposals to Legalize Internet Poker

Proposed Florida Legislation

Representative Joseph Abruzzo (D-85) introduced HB 1441 during the 2010 Regular Legislative Session. The bill was referred to the Committees on Business, & Financial Affairs Policy, Government Operations Appropriations, and the General Government Policy Council. The bill was on the Business & Financial Affairs Policy Committee agenda for March 25, 2010, but was not heard.

The bill created the "Internet Poker Consumer Protection and Revenue Generation Act of 2010." It provided that the Legislature has exclusive authority over intrastate Internet poker. The bill authorized playing and wagering on non-banked,⁹² intrastate games of poker. It provided that the state would contract with an Internet poker hub operator to operate the state's poker network. Licensed cardroom operators would maintain websites as portals into the state's poker network. It also provided restrictions on players, for example, the players must be at least 21 years of age.

The Division of Pari-mutuel Wagering would be authorized to administer the act and regulate the operation of intrastate Internet poker. This authority would include rulemaking, investigatory and disciplinary authority over the hub operator and cardroom affiliates. The division shall choose an Internet poker hub operator through a competitive procurement process. The bill also provided criteria for the hub operator and the contract terms.

The department estimated net revenues of \$5,037,685 for the first year, \$22,325,999 for the second year, and \$36,653,465 for the third year. In addition there would be a transfer to General Revenue from the Pari-mutuel Trust Fund of \$5,802,229 over the three year period.

Poker Voters of America commissioned H2 Gaming Capital to prepare an analysis of the impact of HB 1441. The report indicated that the state has the potential to be the fourth largest intrastate market in the United States. Currently, 900,000 Floridians are registered to play poker online. 300,000 Floridians are playing in the state for money today. The revenue estimates for a regulated intrastate market, as proposed in HB 1441, indicate that Florida's Internet gaming market would be worth \$226 million in 2010, increasing to \$744 in 2014. Ten percent would be payable to the state by the hub operator as an annual tax.

Proposed Federal Legislation

Representative Barney Frank introduced H.R. 2267 in the 111th Congress.⁹³ If enacted the bill would amend

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Liz Tay, *Analysis: Net Gambling Next on ISP Filter Hitlist?*, ItNews for Australian Business, September 3, 2010, (available at: <http://www.itnews.com.au/News/230947,analysis-net-gambling-next-on-isp-filter-hitlist.aspx/1>, last visited September 20, 2010).

⁹¹ *Id.*

⁹² Non-banked games are those in which the 'House' is not a player – the players play against each other, with the House facilitating.

⁹³ H.R. 4976, Internet Gambling Regulation and Tax Enforcement Act of 2010 by Rep. Jim McDermott (WA-7) has not been heard by committee.

UIGEA.⁹⁴ The bill was referred to the House Committee on Financial Services and the Committees on Energy and Commerce, and the Judiciary.⁹⁵ The bill, as amended, passed the House Committee on Financial Services 41-22 on July 29, 2010.⁹⁶ The legislation provides administrative and licensing requirements to regulate Internet gambling.⁹⁷ The bill prohibits the operation of an Internet gambling company within the borders of the United States without the proper license. It prohibits the acceptance of bets or wagers made by persons within the borders of the United States without a license.⁹⁸ The legislation also requires companies applying for a license to provide consumer protections, combat fraudulent activities, and help prevent compulsive Internet gambling.⁹⁹ The bill also protects financial service providers from liability for the actions of a licensed Internet gambling operation.¹⁰⁰ Finally, the bill allows individual states and tribal authorities to opt out of the licensing procedure in their jurisdictions, allowing them to prohibit Internet gambling or set up their own scheme of regulation.¹⁰¹

The House Committee on Financial Services on July 29, 2010, ordered the Congressional Budget Office (CBO) to prepare a report for H.R. 2267. The CBO's report states "that enacting H.R. 2267 would increase revenues by \$971 million and direct spending by \$688 million from 2011-2020."¹⁰²

The future of H.R. 2267 is uncertain. Representative Frank says that it is unlikely the bill will be introduced on the floor before the midterm elections, and that it may not be taken up during the lame-duck session following the elections.¹⁰³ A bill just dealing with Internet poker, S. 1597 by Senator Robert Menendez (NJ) has not had a hearing in the Senate.¹⁰⁴ Supporters of the legislation are lobbying for a bill, at least dealing with Internet poker, to be passed during the "Lame Duck" session after the November 2, 2010 elections.¹⁰⁵

Proposed California Legislation

The state legislature of California took up the issue of Internet Gambling during the 2010 legislative session. State Senator Roderick Wright, the chair of the Senate Committee on Governmental Organization, authored the Senate Bill 1485.¹⁰⁶ The bill has been named the "California Online Poker Law Enforcement Compliance and Consumer Protection Act."¹⁰⁷

According to the California Senate Bill Analysis the proposed bill "is intended to extend consumer protections to

⁹⁴ Congressional Budget Office Report, H.R. 2267, INTERNET GAMBLING REGULATION, CONSUMER PROTECTION, AND ENFORCEMENT ACT, September 22, 2010, (available at: <http://www.govtrack.us/congress/billreport.xpd?bill=h111-2267&type=cbo>).

⁹⁵ The reference to the Committees on Energy and Commerce, and the Judiciary were for a period to be determined by the Speaker. See note 96, infra.

⁹⁶ The Library of Congress, *Bill Summary and Status, 111th Congress (2009-2010)*, (available at: <http://thomas.loc.gov/cgi-bin/bdquery/D?d111:86.:/temp/~bdNhCi:@@L&summ2=m&>, last visited: September 28, 2010).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Congressional Budget Office Report, H.R. 2267, INTERNET GAMBLING REGULATION, CONSUMER PROTECTION, AND ENFORCEMENT ACT, September 22, 2010, (available at: <http://www.govtrack.us/congress/billreport.xpd?bill=h111-2267&type=cbo>) (Last visited on : 9/28/2010).

¹⁰³ Kevin Bogardus, *House Finance Chairman Not Optimistic About Online Gambling Bill Moving*, THE HILL, September 20, 2010, (available at: <http://thehill.com/homenews/house/119879-frank-not-optimistic-about-online-gambling-bill-moving>).

¹⁰⁴ The Library of Congress, *Bill Summary and Status, 111th Congress (2009-2010)*, (available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d111:1:./temp/~bdAbjx:@@X/home/LegislativeData.php>) (last visited September 30, 2010).

¹⁰⁵ Interview with Poker Players Alliance, September 30, 2010.

¹⁰⁶ Stephen Carter, *California Introduces Long-Awaited Internet Poker Bill*, E-Gaming Review, May 30, 2010, (available at: <http://www.egrmagazine.com/news/569002/california-introduces-long-awaited-internet-poker-bill.html>, last visited September 22, 2010).

¹⁰⁷ Martin Harris, *California Online Poker Bill's Details Spur Discussion*, Poker News, April 25, 2010, (available at: <http://www.pokernews.com/news/2009/04/california-online-poker-bills-details-spur-discussion-6469.htm>, last visited September 22,).

Californians who play online poker, ensure that the revenues from Internet gaming are realized in California, and to protect the public interest by ensuring that all aspects of Internet gaming are regulated and controlled by the state (Department of Justice).¹⁰⁸ The bill authorizes the California Department of Justice to enter into a 20 year contract with firms to operate up to three Internet gaming hubs. It requires the players to be 21 years of age, they must register with the department, and be located in California. All facilities and bank accounts must also be located in California.

The bill provides requirements for the hub operators, including factors for evaluating the applicants and provides that the California Gaming Control Commission and the department determine the operators' suitability according to the provisions of the act. The hub operators must pay a tax of at least 10 percent of the gross revenue of the operation. An economic study supplied by Senator Wright to the staff of the Senate Committee on Government Organization estimated that the bill could generate \$2.4 and \$6.1 billion from 2012 to 2020.¹⁰⁹ The report noted that "[a] key unknown in the estimate is the extent to which revenues currently flowing offshore to illegal sites will be captured by the legal California hubs."¹¹⁰

The future of the proposed legislation is also uncertain. A scheduled hearing on the bill was postponed upon request of the author and the California Legislature has adjourned for this session.

Proposed New Jersey Legislation

A bill was introduced in the New Jersey State Senate to authorize the eleven major casinos in New Jersey to establish intrastate Internet gambling websites.¹¹¹ New Jersey lawmakers see this proposed legislation as a way to re-direct players already involved in illegal Internet gambling to government regulated sites that would ensure consumer protections as well as create new government revenues through taxation.¹¹²

The bill provides a 20 percent tax on the gross revenues produced by Internet gambling.¹¹³ The bill grants the New Jersey Casino Control Commission the authority to oversee the permitting process and to determine the qualifications of the applicants.¹¹⁴ Computer servers that host the gambling website must reside within the boundaries of Atlantic City, and the players may be located anywhere within the state of New Jersey.¹¹⁵ A casino with a valid license will be allowed to apply for a permit to conduct Internet gambling, and if granted, the permit is valid for one year.¹¹⁶ Any company applying for a permit must provide the commission with a list of procedures put in place by the company for accounting and administrative controls.¹¹⁷ The bill was referred to the Senate State Government, Wagering, Tourism & Historic Preservation Committee which reported the bill favorably with amendments on June 3, 2010. The bill was then referred to the Senate Budget and Appropriations Committee which has taken no action on the bill. A companion bill, A2570 by Assemblyman John Burzichelli (Deputy Speaker), was introduced in the New Jersey Assembly, referred to the Assembly State Government Committee and has not been heard.¹¹⁸

¹⁰⁸ California Senate Bill 1485, *Bill Analysis*, June 22, 2010, (available at: http://info.sen.ca.gov/pub/09-10/bill/sen/sb_1451-1500/sb_1485_cfa_20100628_173132_sen_comm.html , last visited September 23,2010).

¹⁰⁹ The bill analysis cited a June 2010 report by LECG, Inc. (authored by Jose Alberro, Ph.D. and Ronald H. Schmidt, Ph.D.) and titled, "A Multi-Hub Model for Legalized Internet Poker in California: Fiscal and Economic Implications."

¹¹⁰ *Id.*

¹¹¹ Associated Press, *Some N.J. Lawmakers Betting on the Internet for New Casino Game Revenue*, NEW JERSEY ONLINE, June 3, 2010, (available at: http://www.nj.com/business/index.ssf/2010/06/some_nj_lawmakers_betting_on_t.html, last visited September 27, 2010).

¹¹² Associated Press, *Some N.J. Lawmakers Betting on the Internet for New Casino Game Revenue*, NEW JERSEY ONLINE, June 3, 2010, (available at: http://www.nj.com/business/index.ssf/2010/06/some_nj_lawmakers_betting_on_t.html, last visited September 27, 2010).

¹¹³ 2010 New Jersey Senate Bill 490, (available at: http://www.njleg.state.nj.us/2010/Bills/S0500/490_R1.PDF, last visited September 27,2010).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ New Jersey Legislature Bill Information, (available at <http://www.njleg.state.nj.us/bills/BillView.asp>, last visited September 30, 2010). A1331by Assemblyman Vincent Prieto has not been heard by its committee of reference, the Assembly

Impact of Legalizing Internet poker on the Seminole Indian Gaming Compact

The legalization of Internet Poker in Florida may affect the state's compact with the Tribe. The Tribe would not be required to make the Minimum Guaranteed Payments¹¹⁹ if the state affirmatively allows Internet or online gaming and the Tribe's net win for all of its gaming facilities combined drops more than 5 percent below its Net Win for the previous 12 months.¹²⁰ However, the Tribe would still be required to make payments based on the Percentage Revenue Share Amount,¹²¹ which is a graduated scale that ranges from 12 percent of Net Win up to \$2 billion and 25 percent of Net Win greater than \$4.5 billion.¹²²

The Minimum Guaranteed Payments would be reinstated for any subsequent Revenue Sharing Cycle if the Net Win rises above the amount of the 5 percent reduction. There would be no reduction if the decline in the Net Win were due to an Act of God, war, terrorism, fire, flood, or accidents that damage the Tribe's facilities. There would also not be a reduction if the Tribe offered Internet or online gaming as authorized by law.¹²³

Regulatory Oversight and Gaming Committee. S 316 was introduced by Senator Richard Codey which makes Internet betting illegal also has not had a hearing from its committee of reference.

¹¹⁹ The payments are \$150 million for the first two years of the compact, \$233 million for the next two years, and \$234 million for the last year for a total of \$1 billion.

¹²⁰ *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, Part XI.B.3., approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833.

¹²¹ *Id.*

¹²² See Part XI.B.1.(b) of the compact for the complete percentage payment schedule.

¹²³ *Supra* at n. 120.