



The Florida Senate

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Committee on Regulated Industries

REVIEW OPTIONS FOR NEW LOTTERY GAMES AND GAME DISTRIBUTION

Statement of the Issue

The purpose of this issue brief is to provide a review of potential new games for the Florida Department of Lottery, including fast keno and multi-state games such as Mega Millions. Senator Diaz de la Portilla requested a review of whether implementing these new games would have an impact on the revenue sharing from the Seminole Indian Compact.

The Florida Department of Lottery (department) is authorized to supervise and conduct the operation of the state lottery under ch. 24, F.S. Currently, the department operates both online games (games where the player picks numbers and the drawing occurs at a later time and location and which are connected to a central computer) and instant games (paper scratch-off tickets). The department conducts state online games and also has joined the multi-state lottery game Powerball. Players can purchase tickets at one of over 13,000 retailers. Instant tickets can also be purchased from instant ticket vending machines. Currently, there are approximately 1,500 instant ticket vending machines used across the state.

In 2010, the state entered into a tribal-state compact (compact) with the Seminole Indian Tribe of Florida (Tribe), granting the Tribe substantial exclusivity on Class III and casino-style gaming in exchange for revenue sharing with the state. The compact specified that if an expansion of gaming occurs, Tribal payments may be reduced or may cease. However, the compact also carved out exceptions for certain activities and for limited types of expansion. For example, the compact provides that games authorized by ch. 24, F.S., as of February 1, 2010, have no impact on revenue sharing from the Tribe. In addition, the operation of "lottery vending machines," as defined in the compact, has no impact on revenue sharing payments. The department has not implemented all of the lottery vending machines defined in the compact.

In March 2011, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued Report 11-12, *Lottery Profits Decline; Options Available to Enhance Transfers to Education*. The OPPAGA report suggested that the department expand the retailer network. One option for such an expansion would be to sell all types of lottery tickets, not just instant tickets, through the use of a lottery vending machine. The OPPAGA report also discussed an expansion of the types of lottery games offered as a way to attract new players and generate more revenue for the department. The suggested games include fast keno, Mega Millions, video lottery terminals, and higher priced instant ticket games. Throughout the OPPAGA report, the issues of statutory authorization and revenue sharing with the Tribe are raised as potential issues that would need to be addressed for any additional games or new methods for game distribution.

Discussion

Florida Department of Lottery

The Department of the Lottery is authorized by Art. X, s. 15, Florida Constitution, which states that "[l]otteries may be operated by the state." Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., provides legislative purpose and intent in regard to the lottery:

- (1) The purpose of this act is to implement s. 15, Art. X of the State Constitution in a manner that enables the people of the state to benefit from significant additional moneys for education and also enables the people of the state to play the best lottery games available.

- (2) The intent of the Legislature is:
- (a) That the net proceeds of lottery games conducted pursuant to this act be used to support improvements in public education and that such proceeds not be used as a substitute for existing resources for public education.
 - (b) That the lottery games be operated by a department of state government that functions as much as possible in the manner of an entrepreneurial business enterprise. The Legislature recognizes that the operation of a lottery is a unique activity for state government and that structures and procedures appropriate to the performance of other governmental functions are not necessarily appropriate to the operation of a state lottery.
 - (c) That the lottery games be operated by a self-supporting, revenue-producing department.
 - (d) That the department be accountable to the Legislature and the people of the state through a system of audits and reports and through compliance with financial disclosure, open meetings, and public records laws.

Section 20.317(3), F.S., provides that the department shall be located in Tallahassee. Regional offices may be established throughout the state as necessary for the efficient operation of the lottery. In addition, s. 24.104, F.S., requires the department to operate the state lottery “so as to maximize revenues in a manner consistent with the dignity of the state and the welfare of its citizens.”

Lottery Games Authorized Under Chapter 24, Florida Statutes

Chapter 24, F.S., does not define or specify the types of games that may be authorized. Instead, the chapter merely instructs the department to create rules regulating the types of games that are conducted and to be sensitive to the pari-mutuel industry when creating tickets.¹ The statute also provides that the name of an elected official may not appear on a lottery ticket,² that an electronic terminal or device used in a lottery game may not be used to dispense coins or currency,³ and that the only type of player-activated device that may be used is one to dispense instant lottery tickets.⁴ However, the player-activated device may dispense change.⁵

Lottery Defined

The term lottery is not defined in the state statutes or state constitution. Generally, a lottery is required to have three elements: prize, consideration, and chance.⁶

In *Lee v. Miami*, a 1935 Florida Supreme Court case, the court considered whether a coin operated device was a lottery.⁷ In that case, the court considered the common dictionary definitions of “lottery” as a “scheme for the distribution of prizes by lot or chance” or a distribution of prizes by chance where a small amount of money is wagered for the chance to obtain a larger value in money or other items.⁸ The Florida Supreme Court also considered the definition of “lottery” used by the U.S. Supreme Court in 1893, stating that the court defined a lottery as “a scheme for raising money by selling chances to share in a distribution of prizes; more specifically, a scheme for the distribution of prizes by chance among persons purchasing tickets, the correspondingly numbered slips, or lots, representing prizes or blanks, being drawn from a wheel on a day previously announced in connection with the scheme of intended prizes. In law the term ‘lottery,’ said the court, embraces all schemes for the distribution of prizes by chance, such as policy playing, gift exhibitions, prize concerts, raffles at fairs, etc., and includes various forms of gambling.”⁹

¹ Sections 24.105(9)(a) and 24.105(11), F.S.

² Section 24.105(9)(a)1., F.S.

³ Section 24.105(9)(a)2., F.S.

⁴ Section 24.105(9)(a)4., F.S.

⁵ *Id.*

⁶ *Equitable Loan & Security Co. v. Waring*, 44 S.E. 320, 344 (Ga. 1903).

⁷ *Lee v. City of Miami*, 163 So. 486, 488 (Fla. 1935).

⁸ *Id.*

⁹ *Id.* quoting *Horner v. U.S.*, 13 S.Ct. 409, 412-413 (U.S. 1893).

The court examined the history of gaming laws, specifically mentioning that the Legislature has created separate sanctions for some gambling which differ from those imposed for lotteries. The court held that the distinction and separation in the laws illustrates that there are differences between a lottery and other gambling activities. The court noted that not every scheme that involves prize, chance, and consideration is a lottery.¹⁰ When determining whether the coin operated devices were lotteries, the court held that lotteries infect the whole of a community and the impact of gaming is “generally confined to a few persons and places.”¹¹ Ultimately, the court determined that because the use of coin operated machines was to be restrained, they did not constitute a lottery.¹²

There are currently 43 state lotteries plus the government of the District of Columbia has a lottery.¹³

Lottery Games Currently Conducted

The department currently offers a mix of online and instant games, raffles, and second chance drawings. The online games consist of the multi-state Powerball game and Florida-only games, which includes the Florida Lotto, Mega Money, Fantasy 5, Play 4, and Cash 3. The department conducts a quasi-instant ticket game called Lucky Lines in which the player selects the numbers, in a similar manner as an online game, but where the player instantly matches and could win up to \$3 million per ticket.¹⁴ The department offers a millionaire raffle, Lucky 7 Raffle, and also conducts a Second Chance Drawing for prizes on non-winning tickets. In addition, the department offers instant tickets, or scratch-off tickets. Currently there are over 50 instant tickets available for retailers to offer with ticket prices ranging from \$1 to \$20. During fiscal year 2009-2010, the department’s games generated nearly \$4 billion in sales, which resulted in \$1.247 billion in transfers to the Educational Enhancement Trust Fund.¹⁵

Seminole Indian Compact: Impact on Lottery Expansion

On April 7, 2010, the Governor and the Tribe executed a compact under the Indian Gaming Regulatory Act of 1988¹⁶ that authorizes the Tribe to conduct Class III gaming¹⁷ at seven tribal facilities throughout the state. The compact was subsequently ratified by the Legislature.¹⁸

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.¹⁹ The compact permits the

¹⁰ *Id.* at 490.

¹¹ *Id.*

¹² *Id.*

¹³ Alabama, Alaska, Hawaii, Mississippi, Nevada, Utah, and Wyoming do not have lotteries.

¹⁴ Lucky Lines started on October 11, 2010, and is the most recent online game introduced by the department.

¹⁵ According to the department’s report on general revenues for June 2011, the games generated over \$4 billion in ticket sales, which resulted in \$1.19 billion in transfers to the EETF for fiscal year 2010-2011. These figures have not been audited. A copy of the 2009-2010 Annual Report is available at: <http://www.flalottery.com/exptkt/annualreport09-10.pdf>

¹⁶ 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.

¹⁷ The Indian Gaming Regulatory Act of 1988 divides gaming into three classes:

- “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.

¹⁸ Chapter 2010-29, L.O.F.

¹⁹ *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, approved by the U.S. Department of 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 tribal casinos at the Brighton and Big Cypress facilities.²⁰ 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 tribal facilities, the compact provides for revenue sharing payments by the Tribe to the state.²¹

If the state violates the exclusivity provisions in the compact, the Tribe may be able to reduce or cease payments to the state. However, the compact permits lottery games authorized under ch. 24, F.S., as of February 1, 2010, but not including any player activated machine or device other than a Lottery Vending Machine (LVM) or any banked or banking card or table game.²² As noted above, ch. 24, F.S., does not authorize any games but instead places some limitations on the types of games or methods of game distribution that may be utilized. As a result, if the new game or distribution method is considered a lottery game authorized as of February 1, 2010, and the new game is not a banked card or table game or player activated or operated machine or device, there should be no impact on tribal payments.

While the compact generally exempts lottery games from activities that could otherwise disrupt revenue sharing payments to the state, the compact contains a limitation on lottery game distribution.²³ The limitation in the compact on the use of player activated machines or devices carved out potential expansion for LVMs, which provides for some lottery expansion. The compact specifies the following three types of LVMs:²⁴

1. A machine to dispense pre-printed paper instant lottery tickets, but that does not read or reveal the results of the ticket, or allow a player to redeem any ticket. The machine, or any machine or device linked to the machine, may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. This does not preclude the use of casino game themes or titles on such tickets or signage or advertising displays on the machines;
2. A machine to dispense pre-determined electronic instant lottery tickets that displays an image of the ticket on a video screen on the machine and the player must touch the image of the ticket on the video screen to reveal the outcome of the ticket, provided the machine does not permit a player to redeem winnings, does not make use of video reels or mechanical reels or simulate the play of any casino game, and the lottery retailer is paid the same amount as would be paid for the sale of paper instant lottery tickets; or
3. A machine to dispense a paper lottery ticket with numbers selected by the player or randomly by the machine. The machine does not reveal the winning numbers and the winning numbers are selected at a subsequent time and different location through a drawing by the Florida Lottery. The machine, or any machine or device linked to the machine, may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. The machine may not be used to redeem a winning ticket. This does not preclude the use of casino game themes or titles for signage or advertising displays on the machine.

Interior effective July 6, 2010, 75 Fed. Reg. 128. (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).

²⁰ 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 seven of its tribal facilities. The authority for banked card games terminates at the end of 5 years unless affirmatively extended by the Legislature or the Legislature authorizes any other person to offer banked card games.

²¹ Currently, the Tribe is in the second year of the compact and making a fixed payment of \$12.5 million per month.

²² Chapter 24 has not been amended since the 2007 Regular Legislative Session. Chapter 2007-128, L.O.F., amended s. 24.105(10), F.S., to allow the department to hold patents.

²³ The compact generally limits the expansion into new Class III or casino-style games. The limitation on the type of machines that may dispense lottery tickets is a limitation on distribution methods as well as game type.

²⁴ Parts III.R. and XII.B.8., Gaming Compact, *supra* at n. 19.

The compact limits the number of LVMs that may be located at any one location to ten. The compact further limits the usage of LVMs to provide that no LVM that dispenses electronic instant tickets (type two above) may be installed at any licensed pari-mutuel facility.

Options for Game Expansion

Mega Millions

Mega Millions is a multi-state lottery game, similar to Powerball. Mega Millions boasts that their game offers the biggest jackpots, starting at \$12 million.²⁵ Mega Millions began in 1996 but was then known as the Big Game. The first drawing took place on September 6, 1996, with six states participating: Georgia, Illinois, Maryland, Massachusetts, Michigan and Virginia. In 2002, the name of the game was changed to Mega Millions. In 2007, Mega Millions set the record for North America by awarding the largest jackpot in this country of \$390 million. In 2010, 23 more states joined Mega Millions when a cross-selling agreement with Powerball went into effect. Today, Mega Millions is played in 43 jurisdictions, which includes 41 states, the District of Columbia, and the U.S. Virgin Islands.²⁶

The Mega Millions game is purely another form of a traditional lottery game, similar to the already offered Power Ball game and the state online lottery games; multi-state games are authorized by s. 24.105(18), F.S. In addition, there should be no impact on any revenue sharing with the Tribe if the department begins to offer this game. In a 2010 report, OPPAGA estimated that adding Mega Millions could generate \$26 to \$35 million in additional transfers to education.²⁷ However, GTECH, the Lottery's online vendor, determined that adding an additional online game would result in little to no gain in revenue transfers to the state.²⁸ According to the department, the addition of Mega Millions could shift sales from Powerball and Florida Lotto and may reduce the incentive for sporadic players to respond to large jackpots as there would be more frequent jackpots.

Full Service Instant Ticket Vending Machines

Currently, the department's retailers sell online tickets by requiring the player to complete a paper voucher to select the game, select the amount they wish to play, select the numbers they wish to play, or select the box for QP (Quick Pick), which allows the computer terminal to randomly select the numbers for the player. If the player requests assistance, the player may ask the retailer to manually enter the needed information into the terminal instead of completing a paper voucher. The terminal prints a ticket with the information printed on the face of the ticket that the player must retain to verify if they have a winning combination of numbers. The ticket must be turned in to the retailer or department for payment of any prizes.

If the player wishes to play an instant ticket or scratch-off game, the player can either purchase the ticket from the retailer's employee or purchase the ticket from an instant ticket vending machine (ITVM). Approximately 1,500 ITVMs are currently in use across the state. Chapter 24, F.S., requires that each ITVM be in the line of sight of a retailer in order to verify the age of the buyer. In addition, the statute provides that the machine may only be used to dispense instant tickets. Currently, online tickets are not sold through ITVMs. In order for the online tickets to be sold through a vending machine, the statute would need to be amended to allow for both online and instant tickets to be sold through these devices.²⁹

The compact provides for the department to expand the types of LVMs that the department utilizes. Specifically, the compact provides that the department may sell online tickets through the third specified type of LVM. Therefore, amending ch. 24, F.S., to allow for a full service vending machine should have no impact on revenue sharing with the Tribe assuming proper safeguards are put in place to ensure that no more than 10 machines may

²⁵ See <http://www.megamillions.com/about/> (Last visited June 20, 2011).

²⁶ Florida and Louisiana are the only two Powerball states that do not offer Mega Millions.

²⁷ *Lottery Profits Flat: Increasing Retailer Outlets Is Critical to Increasing Sales*, Report No. 10-16, Office of Program Policy Analysis and Government Accountability, Florida Legislature, January 2010. A copy of the report can be viewed at: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1016rpt.pdf> (Last visited August 17, 2011).

²⁸ Staff requested a copy of the GTECH report to review, but a copy of the report was not supplied.

²⁹ See s. 24.105(9)(a)4., F.S. Statutory changes would need to permit a player to select QP or select individual numbers at the terminal.

be located at any one location and that the LVM does not make use of spinning reels and otherwise complies with the definition of LVM in the compact.

According to the department, machines that also offer online games³⁰ have the potential to transfer from \$11 million to \$75 million in additional annual revenue to education. The department indicated that full service machines may attract larger corporations not currently selling lottery products. The department noted that these machines would allow for expansion of the retailer network into locations such as airports and hotels, it would provide more convenience for players, and it would not require modification to existing retailer contracts for retailers that carry both scratch-off and online games. Current law would require the retailers to monitor the machines for underage play. The department noted that it would require statutory and budgetary authorization from the Legislature.

Keno or Quick Draw

Currently, over 90 percent of the department's lottery retailers are convenience stores, grocery stores, or liquor stores. These establishments are typically places where consumers can quickly enter the store, make their intended purchases, and then purchase a lottery ticket as an ancillary purchase prior to exiting the store. In other markets, there has been an effort to sell lottery products utilizing non-traditional retailers, such as restaurants and bars. In at least 15 U.S. jurisdictions, lotteries have implemented a quick draw lottery game often referred to as keno, which is typically offered in bars and restaurants.³¹

Keno is fast paced and allows the player to use a paper playslip to play a faster version of an online game. Keno is most often played in social environments, such as bars and restaurants, with "to go" options offered for purchase at the traditional lottery retailer. First, the player determines how many numbers they want to play (often referred to as spots). In most instances, players select between one and ten spots. Second, players determine how much they wish to wager; wagering amounts typically range from \$1 to \$20 per game. Third, the player chooses his or her numbers or selects QP. In some cases, the ticket allows the player to purchase multiple tickets at once for multiple draws or advance play. In addition, some states have bonus play or multiplier options that increase the jackpots for matching numbers. In most states that offer keno, a department computer will electronically conduct drawings to determine the winning numbers in quick increments of time, often every four minutes instead of conducting one or two drawings per week, like the traditional online game that is conducted by the department.³² The results are displayed on monitors at the retailer and on the Internet.³³

Although most keno games are played the same, there is some variation in how the game is played across the states. In Ohio, the player selects between 1 and 10 numbers out of a pool of 80 numbers or can select QP. The drawings occur every 4 minutes, 7 days per week, between the normal gaming hours of 6:04 a.m. and 2:28 a.m.³⁴ In New York, the game is played exactly the same but is referred to as "Quick Draw."³⁵ Michigan offers both a keno game and a club keno game. To contrast the keno game described above, Michigan offers keno once per

³⁰ Online games refer to the existing games that are sold through the on-line terminals connected to the Lottery's central computer system.

³¹ Jurisdictions that currently offer keno through their lottery include: California, Georgia, Ohio, New York, Michigan, Washington, Indiana, Kansas, Maryland, Massachusetts, Missouri, Oregon, Rhode Island, West Virginia, and the District of Columbia.

³² Currently, two department online games occur on a more frequent, daily basis; the online games of Play 4 and Cash 3 are twice daily live drawings.

³³ In the District of Columbia, some retailers have video displays that show the winning numbers from the draws. Some displays show balls, some show cards, and some have a scroll on the bottom that display the other online winning numbers. See <http://www.dclottery.com/games/keno/howtoplay.aspx> (Last visited August 22, 2011).

³⁴ See the Ohio Lottery Commission website, which can be found at: <http://www.ohiolottery.com/Games/Keno.aspx> (Last visited August 3, 2011).

³⁵ In New York, the drawings begin daily at 4 a.m. http://nylottery.org/wps/portal!/ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os_jggBC3kDBPE0MLC0dnA09vT0fLQDNvA0dfU30_j_zcVP1L_ShzXKCoCgw30I3NS0xOTK_ULst0cAYmfjdU!/d13/d3/L0IJSklna21BL0IKakFBRXIBQkVSQ0pBISEvNEZH3NvMFZ2emE5SUFnIS83X1NQVEZUVkk0MTg4QUMwSUtJQTIRNkswUVMwL3dCT09JNzMxNDAwMDY!/?PC_7_SPTFTVI4188AC0IKIA9Q6K0QS0_WCM_CONTEXT=/wps/wcm/connect/NYSL+Content+Library/NYSL+Internet+Site/Home/Daily+Games/QUICK+DRAW/ (Last visited August 3, 2011).

night, with a nightly drawing occurring at 7:29 p.m. Instead of the machine selecting 20 winning numbers at random like the Ohio and New York game, 22 numbers are selected at random as the winning numbers.³⁶ Michigan's "Club Keno" occurs every four minutes. Players have the option to download an application on their smart phones to watch the live drawings and to help determine if they have matched any numbers.³⁷ The state of Washington also offers daily keno drawings occurring nightly at 8 p.m.³⁸ Indiana's version is also called "Quick Draw" and drawings occur once per day.³⁹ Maryland, in addition to offering keno with bonus and super bonus options, also offers a less expensive option called "Packaged Keno-To-Go" where a player can purchase 100 game tickets for just a quarter per game.⁴⁰ Massachusetts allows the player to select 12 numbers instead of 10. In addition, in Massachusetts, if the player wishes to see if their keno numbers match on the Internet, the player can do so by looking at a spinning roulette wheel, a keno board, or with baseball graphics.⁴¹

Two states have prohibited the game of keno even though they have authorized lotteries.⁴² In addition, the California Supreme Court has ruled that keno, when played with fixed prize payouts, is not a lottery game because it is operated as a banked game.⁴³ The court found that keno does not offer a prize by chance but instead the California lottery could win every game or lose every game, thereby allowing the lottery to bet against the participants.⁴⁴ After the California Supreme Court decision, the California Lottery began offering a new quick draw game called "Hot Spot."⁴⁵ The game operates similar to how keno or quick draw operates in other states, but the game does not offer fixed prizes. Instead, participants share in a prize pool. The game is not as profitable as the fixed prize payout game was for the state.⁴⁶

For purposes of the Indian Gaming Regulatory Act, federal regulations define keno as a class III "casino" game.⁴⁷ Lotteries are also considered class III games under these regulations.⁴⁸

In contrast to California's ruling, the department already has three online games with preset payouts: Cash 3,⁴⁹ Play 4,⁵⁰ and Lucky Lines.⁵¹ On all three games, the player, regardless of how many people purchase chances to win the game, has a predetermined payout for the different winning combinations. Both Cash 3 and Play 4, just like keno, require the player to use a paper playslip, select numbers or QP, and wait for a drawing to occur to determine if they have matched numbers. Once the drawing occurs, the player can determine the preset amount of their winnings. With Lucky Lines, a quasi-instant game, the player selects numbers or QP and the terminal prints out a game board. The player can determine whether he or she has won or lost instantly.

³⁶ According to the Michigan Lottery's website, which can be found at:

http://www.michiganlottery.com/daily_keno_info?cid=p1core-tbx05.f.1800/b2012/325/8112a212.11b3fa5e03948ea057bbf884600b4eb3# (Last visited August 3, 2011).

³⁷ See http://www.michiganlottery.com/club_keno_info?cid=p1core-tbx08.f.1800/b2012/503/03a27802.666213e93589450e1bc85f46110ab13c# (Last visited August 3, 2011).

³⁸ <http://www.walottery.com/Games/DailyKeno/Default.aspx> (Last visited August 22, 2011).

³⁹ <http://www.hoosierlottery.com/games/quick-draw> (Last visited August 22, 2011).

⁴⁰ <http://mdlottery.com/games/keno/> (Last visited August 22, 2011).

⁴¹ <http://www.masslottery.com/games/keno.html> (Last visited August 22, 2011).

⁴² See s. 20, Art. III, Idaho Constitution (providing that the game of keno is unlawful casino gambling) and s. 24(6)(c), Art. IV, Wisconsin Constitution (providing keno is a game that the state run lottery may not conduct).

⁴³ *Western Telcon v. California State Lottery*, 13 Cal. 4th 475 (1996).

⁴⁴ *Id.* at 489. The California court found that the amount of payout for keno games was preset and did not change depending on the amount wagered by other players in the game.

⁴⁵ <http://www.calottery.com/Games/HotSpot/HowtoPlay/> (Last visited August 26, 2011).

⁴⁶ See

http://cpr.ca.gov/cpr_report/issues_and_recommendations/chapter_1_general_government/increasing_state_revenues/gg06.html (Last visited August 26, 2011).

⁴⁷ 25 U.S.C. s. 2703(8) and 25 C.F.R. 502.4(a)(2).

⁴⁸ *Id.*

⁴⁹ Cash 3 was launched in 1988.

⁵⁰ Play 4 was launched in 1991.

⁵¹ Lucky Lines was launched in October 2010.

Keno or “Quick Draw,” as demonstrated in other states is a popular game that has generated a substantial amount of revenue for other state lotteries.⁵² Estimates for keno revenue from a 2010 OPPAGA report estimate that the addition of keno could generate an additional \$64 to \$358 million in transfers to education.⁵³ Daily keno could also generate between \$6.8 and \$11.2 million in additional transfers.⁵⁴ According to the department, the addition of a fast draw keno game could generate between \$49 million and \$269 million in additional transfers to education annually. The department indicated that the game could generate new retailers who operate in social venues. The department noted that the addition of keno would require legislative action to modify the requirement for drawings to be witnessed by an accountant⁵⁵ and budget approval for the new gaming system.

Video Lottery Terminals

Video Lottery Terminals (VLTs) are electronic games of chance played on a video screen. Often the term VLT is used broadly to encompass all forms of electronic gaming, including electronic games played through a lottery and slot machine gaming that is not associated with a lottery. In some cases, VLTs are more narrowly defined and strictly limited to gaming that is associated with a lottery. Even if the machine is used for a lottery product, the term VLT can be used to describe a machine that has a random number generator, a machine that reads instant lottery tickets, or both.

In 1989, South Dakota launched the first video lottery system.⁵⁶ The terminals offer a variety of games, including poker, blackjack, keno, and bingo. The maximum bet on the machines is two dollars and the top prize payout is one thousand dollars. Since the start of the games, the terminals have generated over \$1 billion in state revenue.⁵⁷ In addition to South Dakota, other states have authorized VLTs in conjunction with their state lottery. Some states have limited the terminals to establishments that already have gambling activities, such as pari-mutuel wagering facilities, while other states have more broadly allowed VLTs in establishments that have liquor licenses.⁵⁸

Video lottery terminals are estimated to generate upwards of \$400 million in transfers to education.⁵⁹ Because VLTs are essentially slot machine terminals connected through the lottery, legislative action would be required to authorize these games. The compact provides that the lottery may conduct all games authorized by ch. 24, F.S., as of February 1, 2010. Regardless of whether these types of games were authorized, the compact expressly prohibits the use of player activated or operated machines or devices other than three specified types of LVMs. Therefore, amending ch. 24, F.S., to allow for a video lottery product that plays like a slot machine may violate the exclusivity in the compact and all revenue sharing payments from the Tribe could cease once the new lottery product begins to be operated.⁶⁰ According to the department, implementation of VLTs could result in a loss of up to \$69 million in transfers to education or a net gain of over \$200 million depending on the revenues generated from the VLTs and after accounting for the lost compact revenues from the Tribe.

⁵² For calendar year 2010, quick draw in New York generated over \$412 million in sales (6 percent of total sales for the state); for fiscal year 2010-2011, keno generated over \$380 million in sales (22 percent of total sales for the state) for Maryland; for calendar year 2010, quick draw generated over \$133 million in sales in Georgia (4 percent of total sales).

⁵³ OPPAGA Report, *supra* at n. 27.

⁵⁴ *Id.*

⁵⁵ Section 24.105(9)(d), F.S., provides that drawings must be “public and witnessed by an accountant employed by an independent certified public accounting firm.”

⁵⁶ <http://lottery.sd.gov/games/video/>

⁵⁷ Since 1997, all revenues have been deposited in the property tax reduction fund and has provided a 30 percent reduction in property taxes as a result.

⁵⁸ West Virginia has allowed VLTs to be located at the four racetracks in the state since 1994. Since that time, VLTs have been approved for other adult locations that possess a liquor license.

<http://www.wvlottery.com/videolottery/whatisvideolottery.aspx> Ohio (<http://longshotsblues.wordpress.com/2011/06/30/ohio-one-signature-away-from-vlts-at-the-race-tracks/>), Delaware, New York, and Rhode Island (<http://www.rilot.com/video.asp>) are other examples of states that have limited the placement of VLTs to establishments that already have gaming. Oregon permits ten VLTs to be located at pari-mutuels and up to six terminals to be located in facilities with liquor licenses. *See* <http://www.leg.state.or.us/ors/461.html> (Last visited August 22, 2011).

⁵⁹ OPPAGA Report, *supra* at n. 27.

⁶⁰ The compact defines video lottery terminals (VLTs) as “Class III gaming or other casino-style gaming” under the reduction in revenue payments under Part XII of the compact.

Other Electronic Options for Nontraditional Locations

Although the only player-activated machine currently authorized in ch. 24, F.S., is one to dispense instant lottery tickets, the compact with the Tribe provided for three specified LVMs. The second type of machine identified in the compact is one that may dispense an electronic instant ticket. Specifically, the compact provides that the authorized machine may “dispense pre-determined electronic instant lottery tickets that displays an image of the ticket on a video screen on the machine and the player must touch the image of the ticket on the video screen to reveal the outcome of the ticket, provided the machine does not permit a player to redeem winnings, does not make use of video reels or mechanical reels or simulate the play of any casino game, and the lottery retailer is paid the same amount as would be paid for the sale of paper instant lottery tickets”.⁶¹ This type of machine, while not currently used by a lottery in any jurisdiction, could modernize ticket distribution and allow for some expansion of lottery products onto an electronic gaming format.

As noted above, electronic options in bars and restaurants have proven to be profitable for state lotteries. In addition to VLTs, some states have other options in their bars that have also provided substantial state revenue. For example, Louisiana’s video poker machines, which are located in licensed bars, restaurants, hotels, off-track betting parlors, and truck stops, have generated over \$600 million in revenue in 2009-2010.⁶²

Although no jurisdictions are currently operating a machine that would comply with the requirements of the compact, vendors have expressed their willingness to create such a machine. In addition, the District of Columbia’s Lottery is expected to release a similar machine this fall.⁶³ The electronic instant ticket vending machine will read the instant ticket and reveal the outcome to the player in an entertaining fashion. The machine will not impose any chance upon the game or affect the outcome of the game in any way; the machine will merely read the electronic instant ticket and display the outcome. The player will have the benefit of extended play through entertaining graphics, which is expected to drive more consumers to play the games. In addition, the machine will be placed in restaurants and bars, locations that are not typically retailers of the lottery.

Section 24.105(9)(a)4., F.S., provides that the instant ticket vending machine must be “designed to prevent its use or conversion for use in any manner other than the dispensing of instant lottery tickets.” Arguably, the use of a lottery product that allows a player to reveal the results of an instant ticket electronically would be a use other than the mere dispensing of a lottery ticket. In addition, the compact provides that an LVM that dispenses electronic instant tickets may not be installed at any licensed pari-mutuel facility; no prohibition against ITVMs being placed in pari-mutuel facilities currently exists in the law. Therefore, to protect the revenues generated under the compact, it may be in the best interest of the state to amend ch. 24, F.S., to require that only the type of LVMs specified in the compact could be authorized and utilized and to provide that an electronic ITVM may not be located at any licensed pari-mutuel facility.

In April 2010, the Revenue Estimating Conference (REC) analyzed CS/CS/SB 674,⁶⁴ which sought to authorize the three types of LVMs that were included in the compact. The adopted consensus estimate was indeterminate positive for the adoption of both an electronic instant ticket vending machine and a LVM that could dispense online tickets. For just the electronic instant ticket machine, the REC indicated that there are over 2,500 bars, taverns, and restaurants that could become retailers and use these machines. The estimates for these machines ranged from \$32 million to over \$100 million annually. In addition, an interested lottery vendor has estimated that this type of vending machine could generate up to \$40 million per year during the first year of implementation and over \$300 million per year after year three. At least two vendors have expressed an interest in developing LVMs to meet the compact’s definitions. According to the department, electronic ITVMs could provide a business model that would allow for retailer expansion into non-traditional locations such as bars and restaurants. The department indicated that it would need budget approval for the machines.

⁶¹ Part III.R.3., Gaming Compact, *supra* at n. 19.

⁶² <http://lgcb.dps.louisiana.gov/docs/2010-2011%20Annual%20Report.pdf> (Last visited August 22, 2011).

⁶³ <http://www.dclottery.com/AboutUs/eITVMinfo.aspx> (Last visited August 22, 2011).

⁶⁴ Introduced by Senator Jones (R-13) in the 2010 Regular Legislative Session.

Subscriptions

The department currently allows lottery players to purchase tickets in advance for multiple drawings of online games. The advance play option allows the player to purchase up to 14 additional draws⁶⁵ on some games and as many as 52 draws for Lotto. At least 13 other states also allow their players to purchase advance drawings with their lottery retailers; some states give a small discount for purchasing multiple tickets at once.⁶⁶

In contrast to advance play, subscription services for lottery products are available in some states. Subscriptions benefit the consumer by allowing the player to purchase a subscription for multiple lottery draws at once from their home. According to the department, subscriptions benefit the consumer by preventing missed draws, avoiding the inconvenience of waiting in lines to purchase tickets, and providing an easier method for claiming prizes. Subscription services often automatically send checks for any winnings to the player thereby avoiding the potential for lost tickets and unclaimed prizes. In Florida, lottery tickets must be purchased with cash unless the purchaser also purchases at least \$20 worth of additional goods and services.⁶⁷ Subscription applications could be available on the Internet and at retailers and require the purchaser to use a check or money order to comply with current law. If subscriptions were available through a transaction over the Internet and allowed for purchase with a credit card, the statute would need to be amended to allow for the purchase of lottery tickets by credit card.

Subscriptions could be completed and mailed in to the department or completed entirely on the Internet. Federal law generally prohibits online interstate gambling. The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)⁶⁸ provides for several safe harbors to the prohibition on internet gambling, including intrastate and intertribal transactions.⁶⁹ 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 as security that ensure the age and location requirements are met.⁷⁰ There is no specific safe harbor for lottery transactions. As a result, in order to sell lottery tickets on the Internet, the transaction would need to be intrastate.

Although the transaction could be legally conducted under UIGEA, other states have had difficulties with credit card transactions being denied as unlawful internet gambling.⁷¹ Due to difficulties in North Dakota, the state lottery has issued a warning to potential subscription buyers about charges being declined or fees or penalties being assessed by credit card companies for attempting to make these purchases. The lottery further warns that the buyer should contact their credit card company prior to making any charges for lottery products to ensure that they will not be penalized. In addition, the lottery encourages the player to purchase with a check or money order.⁷²

Currently a small percentage of states are selling subscription services. An even smaller number are selling subscriptions on the Internet with a credit card. In 2005, both New York and North Dakota began selling lottery tickets over the Internet and accepting subscription sales with a credit card. Currently, both MasterCard and Discover accept the transactions while Visa has declined to do so. In New York, subscription services represent approximately 5 percent of total sales. Twenty-five percent of all subscriptions are completed completely on the

⁶⁵ Play 4 and Cash 3 can only be purchased for 14 draws in advance.

⁶⁶ See the State of Oregon's lottery at: <http://www.oregonlottery.org/GameInfo/Powerball/> (Last visited August 12, 2011). In Oregon, if the player purchases 26 consecutive draws, the player receives a small discount and only pays \$25.

⁶⁷ Section 24.118(1), F.S.

⁶⁸ The Unlawful Internet Gambling Enforcement Act of 2006 was signed into law by President George W. Bush on October 13, 2006. 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." It is codified at 31 U.S.C. s. 5362.

⁶⁹ 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. See 31 U.S.C. s. 5362(10)(C)(i)(I-II) and 25 U.S.C. s. 2701 et seq.

⁷⁰ 31 U.S.C. s. 5362(10)(B)

⁷¹ See <http://www.pokerlistings.com/uigea-effect-legal-online-gambling-blocked-37720> (Last visited on August 12, 2011). The article notes that both the New Hampshire and the North Dakota lotteries have had difficulties with online transactions.

⁷² See the North Dakota Lottery subscription information found at: <https://www.lottery.nd.gov/LotterySubscription/subscriptions.shtml> (Last visited on August 12, 2011).

Internet with a credit card; other subscriptions are completed by mailing in the application. Subscription sale revenue has remained steady at approximately \$15 million per year in New York. According to a representative from the New York Lottery, subscription sales have generated additional revenue for the lottery as most of the subscription holders are niche players who prefer not to purchase in retail stores. In North Dakota, subscription sales account for approximately 2 percent of all sales. In a 2010 report, OPPAGA estimated that subscription sales could generate an additional \$10 million in transfers to education.⁷³

Internet sales through the lottery could potentially impact revenue payments with the Tribe. First, Part XI.B.3. of the compact provides that “any change in State law to affirmatively allow internet/online gaming (or any functionally equivalent remote gaming system that permits a person to game from home or any other location that is remote from a casino or other commercial gaming facility)” which results in the net win from the Tribe being reduced more than five percent shall require the Tribe to make payments under the Percentage Revenue Share amounts rather than operating under the Guaranteed Minimum Compact Term Payment. The second potential impact in the compact is in Part XII.B.8., which provides the exception for lottery activities conducted prior to February, 1, 2010. This part provides that the only player activated or operated machines or devices that may be used are the three types of LVMS specified in the compact. Section 24.105(9)(a)3., F.S., distinguishes between a player activated machine and a machine that needs the assistance of the retailer. With Internet subscription sales, the application would still need to be processed, verified, and assisted by a retailer. The player cannot process or play anything on the Internet himself. In addition, subscriptions could be handled by paper applications and mailed in with cash or money orders to remove all necessities for any legislative action or difficulties under UIGEA.

Electronic Notifications

Lottery players can find information about current jackpots, available games, and retailers at the department’s website, www.flalottery.com. The website also allows customers to sign up for email alerts, text alerts, or to download podcasts of game drawings. Customers can download a Yahoo! Widget application to their computer to have more lottery information at their fingertips.

In addition to updating their websites, implementing new games, or altering the distribution method of current games, other state lotteries have taken steps to establish a stronger communication network and loyalty base with their customers. For example, some states have created twitter and facebook pages to keep consumers up-to-date on the latest products, prizes, and events. Other states have created loyalty programs that allow frequent lottery purchasers to earn points and purchase or win prizes.⁷⁴ At least one vendor has indicated that there are states that are considering adding a quick response (QR) code to their lottery tickets.⁷⁵ The vendor indicated that the QR code permits the consumer to scan their lottery ticket with their smartphone into a lottery application (app). The app would notify the player if he or she won or how many numbers they matched. These programs and ideas are not solely intended to notify the players of their wins but to also provide a better source of information to the lottery player.⁷⁶ For example, the program can tell the player when the next draw will occur, the jackpot information for the next draw, and could be programmed to inform the player where the closest retailer is located so that the player has the necessary information to purchase another lottery ticket.

According to the department, the department is currently exploring loyalty or VIP program ideas and social networking outreach.

⁷³ OPPAGA Report, *supra* at n. 27.

⁷⁴ E.g., the Georgia Lottery (<https://playersclub.galottery.com/>), the Michigan Lottery (http://www.michiganlottery.com/about_players_club?cid=p1core-tbx09.f.1800/b23a7/593/b5b46469.239360c4b4d3f9aa114d0ea39060b86e), and the Arkansas Lottery (<https://theclub.aslplayerservices.com/about.php>) (Last visited August 22, 2011).

⁷⁵ See http://en.wikipedia.org/wiki/QR_code (Last visited August 22, 2011).

⁷⁶ Two interested vendors have shared a similar concept involving mobile communication devices that would allow a player to scan and reveal whether they have won or lost an instant ticket game through entertaining graphics on their smartphone or on a portable tablet computer.