SB453

168764-1
By Senator Marsh (Constitutional Amendment)
RFD: Tourism and Marketing
First Read: 05-MAY-15
SYNOPSIS: Under existing law, lotteries and gift enterprises are prohibited by Section 65 of the Constitution of Alabama of 1901.

This bill proposes an amendment to Section 65 of the Constitution of Alabama of 1901 to establish an Alabama Lottery and the Alabama Lottery Corporation; to authorize and regulate gaming by the entities currently licensed to conduct pari-mutuel wagering at the four existing racetracks in Alabama where pari-mutuel wagering is currently legal; to levy a state gross receipts tax and a local gross receipts tax on gaming revenue of the racetracks; to levy a tax on vendors of gaming equipment; to provide for the disposition of lottery proceeds and state gaming tax proceeds; to create the Alabama Lottery and Gaming Commission to implement, regulate, and administer gaming and regulate and supervise the Alabama Lottery and Alabama Lottery Corporation; to authorize the Governor to negotiate a compact for gaming with the
Poarch Band of Creek Indians; and to require the Legislature to pass general laws to implement the amendment.

A BILL

TO BE ENTITLED

AN ACT

Proposing an amendment to Section 65 of the Constitution of Alabama of 1901, to establish an Alabama Lottery and the Alabama Lottery Corporation; to authorize and regulate gaming by the entities currently licensed to conduct pari-mutuel wagering at the four existing racetracks in Alabama where pari-mutuel wagering is currently legal; to levy a state gross receipts tax and a local gross receipts tax on gaming revenue; to levy a tax on vendors of gaming equipment; to provide for the disposition of lottery proceeds and state gaming tax proceeds; to create the Alabama Lottery and Gaming Commission to implement, regulate, and administer gaming and regulate and supervise the Alabama Lottery and the Alabama Lottery Corporation; to authorize the Governor to negotiate a compact for gaming with the Poarch Band of Creek Indians; and to require the Legislature to pass general laws to implement the amendment.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The following amendment to the Constitution of Alabama of 1901, as amended, is proposed and
shall become valid as a part thereof when approved by a majority of the qualified electors voting thereon and in accordance with Sections 284, 285, and 287 of the Constitution of Alabama of 1901, as amended:

PROPOSED AMENDMENT

"Section 65.

"Part I.

"Except as provided in Part II and Part III, the legislature shall have no power to authorize lotteries or gift enterprises for any purposes, and shall pass laws to prohibit the sale in this state of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; and, except as provided in Part II and Part III, all acts, or parts of acts heretofore passed by the legislature of this state, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

"Part II.

"Section 1. Declarations. The Legislature finds that lotteries have been enacted in many states and the revenues generated from those lotteries have contributed to the benefit of those states. Many Alabamians already participate in other state lotteries and visit casinos in neighboring states. The majority of Alabamians support the establishment of a lottery and support the limitation, regulation, and taxation of gaming in Alabama. Therefore, the purpose of the proposed amendment is fourfold: (1) to establish and provide for a fair and honest lottery to generate revenue for the state; (2) to limit
and regulate gaming by the existing racetracks for which
and regulate gaming by the existing racetracks for which
gaming is already legal in Alabama; (3) to levy taxes on
gaming at those racetracks to generate revenues for the
benefit of the State General Fund; and (4) to authorize the
Governor to negotiate a compact for gaming with the Poarch
Band of Creek Indians.

"Section 2. Establishment of an Alabama Lottery.

"(a) The Legislature, by general law, shall provide
for the establishment, administration, operation, and
regulation of an Alabama Lottery consistent with this part and
Part III.

"(b) The proceeds from the Alabama Lottery shall be
applied first to the payment of the expenses of administering
and operating the Alabama lottery, including, without
limitation, the payment of all prizes, without any further
appropriation required by law, and the balance of the proceeds
remaining after the payments shall be deposited, as provided
by general law, and held in a special, separate account in the
State Treasury created and designated the "Lottery Trust Fund"
until the time the proceeds are appropriated by the
Legislature.

"(c) The administration of the Alabama Lottery shall
be vested in a corporation hereby created and designated the
Alabama Lottery Corporation. The duties, powers, authority,
and composition of the Alabama Lottery Corporation shall be
enumerated in one or more general laws enacted by the
Legislature subsequent to and supplemental to this amendment.
"Part III.

Section 1. Definitions. As used in this amendment, the following words and phrases shall have the following respective meanings:

"(1) COMMISSION. The Alabama Lottery and Gaming Commission created by this amendment.

"(2) COVERED GAME. Any game or device included within the definition of Class III gaming, as that term is defined in the Indian Gaming Regulatory Act, Section 2703(8) of Title 25 of the United States Code, including any and all table games and electronic representations of such games, and any electronic gaming devices. The term does not include pari-mutuel wagering.

"(3) COVERED GAME VENDOR. Any person who manufactures, distributes, supplies, vends, or leases covered games or equipment necessary to conduct covered games by a racetrack.

"(4) GAMING GROSS REVENUE. The total amount of money or value in any form received by a racetrack with respect to the playing of any form of covered game, less the total money or value in any form paid as prizes or winnings to the players of the covered game and free play or promotional credits, but before deduction of any expenses incurred in operating the establishment, including, but not limited to, depreciation or leasing costs of physical facilities and equipment, wages and other employment costs, utilities, interest, and taxes. Gaming gross revenue may not be included in a pari-mutuel pool for
the purpose of determining any tax levied on pari-mutuel
wagering or for any other purpose.

"(5) RACETRACK. A corporation, limited liability
company, or other business entity authorized by a local racing
commission pursuant to law to operate and conduct pari-mutuel
wagering on live or simulcast races on April 15, 2015, in
Mobile County, Macon County, the City of Birmingham in
Jefferson County, or Greene County. The term includes any
business entity operating covered games under agreement with a
racetrack.

"Section 2. Limitation on Gaming in Alabama.

"(a) Following the effective date of this amendment,
covered games may be operated or conducted only by a racetrack
and only at a single location approved by the commission in
the county in which the racetrack is licensed to operate and
conduct pari-mutuel wagering.

"(b) The conduct of covered games by a racetrack is
not subject to or prohibited, limited, or impaired by:

"(1) Any otherwise applicable provisions of Article
8 (commencing with Section 8-1-150) of Chapter 1 of Title 8 of
or Article 2 (commencing with Section 13A-12-20) of Chapter 12

"(2) Any other statute whenever enacted that is
inconsistent with any provision of this amendment.

"(3) Any judicial order, decision, or opinion issued
prior to the operative date of this amendment that would
otherwise have the effect of prohibiting, limiting, or
impairing the conduct of covered games. No provision of this amendment may be construed to allow a person to operate or conduct covered games except as permitted pursuant to this amendment.

"(c) Except as otherwise provided in Section 5(f), nothing herein shall be deemed to impair, impede, or restrict the operation of charitable bingo conducted pursuant to any validly enacted constitutional amendment authorizing such activity.

"Section 3. Compliance with Federal Law.

"The State of Alabama, acting by and through the adoption of this amendment, and in accordance with the provisions of 15 U.S.C. §1172, does hereby declare that any and all lottery equipment, materials, paraphernalia, and supplies and any and all covered games and equipment, materials, paraphernalia, and supplies may be transported in interstate commerce into or out of the state without violating that section, or any other applicable federal law, if the lottery equipment, materials, paraphernalia, and supplies are used, to be used, or have been used in the conduct and furtherance of the Alabama Lottery, and if the covered games and equipment, paraphernalia, materials, and supplies are used, to be used, or have been used, in the conduct of covered games by racetracks.

"Section 4. State Gross Receipts Tax and Use of the Proceeds Thereof; Local Gross Receipts Tax.
"(a)(1) A state gross receipts tax of 13 percent is levied on the gaming gross revenue of each racetrack. To the extent a racetrack owns and does not lease covered games equipment that produces gaming gross revenue, an additional state gross receipts tax of one percent of the gaming gross revenue from the owned covered games equipment is levied on the equipment.

"(2) The state gross receipts tax on gaming gross revenue for each calendar month shall be paid by each racetrack to the Department of Revenue on or before the twentieth day of the next succeeding calendar month.

"(3) A local gross receipts tax of one percent is levied on the gaming gross revenue of each racetrack.

"(4) Except as otherwise provided in subdivision (5), the local gross receipts tax on gaming gross revenue for each calendar month shall be paid to the county in which the racetrack is licensed on or before the twentieth day of the next succeeding calendar month. The county shall retain one-half of the amount and shall apportion the remaining half among the municipalities in the county on the basis of the ratio of the population of the municipality to the population of all the municipalities in the county and pay the amounts apportioned to the municipalities forthwith.

"(5) The local gross receipts tax on gaming gross revenue of a racetrack operating in a Class 1 or Class 2 municipality for each calendar month shall be paid to the Class 1 or Class 2 municipality on or before the twentieth day
of the next succeeding calendar month. The municipality shall retain one-half of the revenue, shall pay one-quarter of the revenue to the county in which the municipality is principally located, and shall apportion the remaining one-quarter of the revenue to the municipalities in the county other than the Class 1 or Class 2 municipality on the basis of the ratio of the population of the municipality to the population of all municipalities in the county other than the Class 1 or Class 2 municipality.

"(6) A state covered game vendor tax is hereby levied on covered game vendors conducting business in the state in an amount equal to four percent of the gross revenues collected by the covered game vendor from leases or other revenue sharing arrangements with a racetrack.

"(7) A covered game vendor shall pay the state covered game vendor tax for each calendar month to the Department of Revenue on or before the twentieth day of the next succeeding calendar month.

"(8) The state gross receipts tax on gaming gross revenue, the local gross receipts tax on gaming gross revenue, and the state covered game vendor tax shall be in lieu of all other state or local taxes or license fees levied with respect to the conduct of covered games by a racetrack. Notwithstanding the foregoing, a racetrack is liable for all income taxes, franchise taxes, property taxes, lodging taxes, and sales and use taxes on merchandise, food, and beverage
generally applicable at uniform rates to all businesses operating in the county in which the racetrack is licensed.

"(9) The proceeds derived from the state gross receipts tax on gaming gross revenues and the covered game vendor tax shall be deposited in the State General Fund.

"Section 5. Alabama Lottery and Gaming Commission; creation; powers.

"(a) There is hereby created the Alabama Lottery and Gaming Commission. The commission shall regulate and supervise the operation of the Alabama Lottery and the Alabama Lottery Corporation; implement, regulate, administer, supervise, and enforce all laws and rules related to the operation and conduct of covered games by racetracks; and cooperate with the Attorney General and local district attorneys in enforcing all laws related to illegal gambling.

"(b) The Alabama Lottery and Gaming Commission shall consist of five members. One member of the commission shall be appointed by the Governor with the advice and consent of the Senate, one member shall be appointed by the Attorney General with the advice and consent of the Senate, one member shall be appointed by the Lieutenant Governor with the advice and consent of the Senate, one member shall be appointed by the Speaker of the House of Representatives with the advice and consent of the Senate, and one member shall be appointed by the President Pro Tempore of the Senate with the advice and consent of the Senate. The appointment of the initial members of the commission shall be made by those officials holding
office on the effective date of this amendment without the
advice and consent of the Senate and shall be made within 60
days of the effective date of this amendment. The members,
where possible, shall represent the gender and racial
diversity of the state. No more than two members may reside in
the same congressional district.

"(1) Members of the commission shall be residents of
the State of Alabama, United States citizens, and prominent
persons in their businesses or profession, may not have been
convicted of a felony, and may not be the executive director
of or another employee of the commission, an officer of or
occupy an official position in any political party, an elected
official, or actively engaged in the business of, or have a
pecuniary interest in, a racetrack.

"(2) Members shall serve a term of five years and
may serve two complete terms and any portion of an initial
term of less than five years or any portion of an unexpired
term to which appointed. Any vacancy occurring on the
commission shall be filled for the unexpired term by the
appointing authority as described in this section. The initial
term of office upon the effective date of this amendment shall
be one year for the member appointed by the Lieutenant
Governor, two years for the member appointed by the Governor,
three years for the member appointed by the Attorney General,
four years for the member appointed by the Speaker of the
House of Representatives, and five years for the member
appointed by the President Pro Tempore of the Senate. Each
member of the commission shall serve for the duration of his
or her term and until his or her successor is duly appointed
and confirmed by the Senate; provided, however, that if a
successor is not appointed and confirmed within 120 days after
the expiration of a member's term, a vacancy shall be deemed
to exist.

"(c) The commission and its members and employees
shall be subject to the Ethics Law, Section 36-25-1, et seq.,
Code of Alabama 1975; the Open Records Act, Section 36-12-40,
Code of Alabama 1975; the Open Meetings Act, Section 36-25A-1
et seq., Code of Alabama 1975; and the Administrative

"(d) In addition to other enforcement powers granted
by general law, the commission shall have full power and
authority to issue subpoenas and compel the attendance of
witnesses at any place within this state, to administer oaths,
and to require testimony under oath. Any process or notice may
be served in the manner provided for service of process and
notices in civil actions. The commission may pay such
transportation and other expenses of witnesses as the
commission deems reasonable and proper. Any person making a
false oath in any matter before the commission is guilty of
perjury. The commission may appoint hearing examiners who may
administer oaths and receive evidence and testimony under
oath.

"(e) The commission shall regulate and supervise the
conduct and operation of the Alabama Lottery and the Alabama
Lottery Corporation. In addition to the powers granted in subsection (d), additional powers, procedures, and operations of the commission with respect to regulation and supervision of the Alabama Lottery and the Alabama Lottery Corporation shall be enumerated in one or more general laws enacted by the Legislature subsequent to and supplemental to this amendment to further its purposes and provide for its implementation.

"(f) The commission shall regulate and supervise the conduct and operation of covered games by racetracks. In addition to the powers granted in subsection (d), additional powers, procedures, and operations of the commission with respect to regulation and supervision of covered games at racetracks shall be enumerated in one or more general laws enacted by the Legislature subsequent to and supplemental to this amendment to further its purposes and provide for its implementation, subject to the following provisions:

"(1) Upon ratification of the amendment, a racetrack may operate covered games. If a racetrack operates covered games under this subdivision, the provisions related to the state gross receipts tax on gaming gross revenues, the local gross receipts tax on gaming gross revenue, and the covered game vendor tax are immediately applicable.

"(2) Until such time as the commission is fully established, a local racing commission having jurisdiction of a racetrack, in addition to the powers that it has under existing law, shall have the same power to supervise the conduct of covered games as it has to regulate and supervise
racing activities and pari-mutuel wagering thereon, with such
modification of such powers, not inconsistent with this
amendment, as is necessary or appropriate to adapt them to the
purposes of supervising the operation of covered games.

"(3) Nothing in this subsection prohibits, limits, or alters the authority of any local racing commission with respect to the continued regulation and supervision of racing and pari-mutuel wagering at a racetrack.

"(4) Once the commission is fully established, the commission shall assume the regulation and supervision of the conduct and operation of covered games by racetracks and shall issue an initial covered game license to each racetrack to operate and conduct covered games for a period of 20 years. Thereafter, the license shall renew automatically for a period of five years subject to and in accordance with one or more general laws enacted by the Legislature supplemental to and subsequent to this amendment to further its purposes and provide for its implementation, and subject to and in accordance with rules adopted by the commission. The general laws enacted to implement this amendment shall provide a basis on which the commission may refuse to renew a license or a license may be revoked or suspended.

"(5) The number of covered games in operation by a racetrack and the percentage payout to a patron may not be restricted or limited by any general or local law, a local racing commission, or the commission.
"(6) A racetrack may not operate covered games without remitting to the state the applicable state gross receipts tax on gaming gross revenue.

"(7) A person under the age of 21 years may not play any covered game, be employed to operate any covered game, facilitate the playing of any covered game, or serve any persons playing any covered game. This subsection does not prohibit persons under the age of 21 years from being allowed on the premises of a facility where covered games are being played in areas of the facility in which covered games are not being conducted.

"(8) A racetrack and an officer, director, shareholder, member, or other owner of a racetrack may not make a campaign contribution, whether monetary or in kind, to any of the following or a political action committee or principal campaign committee of any of the following:

"(A) An elected public official authorized to make an appointment to the commission or a candidate for the office of an elected public official authorized to make an appointment to the commission.

"(B) A candidate for the Legislature.

"(f) The commission shall license, regulate, and supervise the conduct and operation of charitable bingo games pursuant to and in accordance with any validly enacted constitutional amendment authorizing such activity; provided, however, that bingo games operated pursuant to any validly enacted constitutional amendment shall be limited to being
played on paper sheets or paper cards. Any provision in any
local constitutional amendment authorizing the conduct and
operation of charitable bingo games to the contrary is hereby
amended to conform to this provision. The powers, procedures,
and operations of the commission with respect to the
licensing, regulation, and supervision of charitable bingo
games shall be enumerated in one or more general laws enacted
by the Legislature subsequent to and supplemental to this
amendment to further its purposes and provide for its
implementation.

"(g) The Alabama Lottery Corporation may enter into
reciprocal agreements with other jurisdictions for the
operation and promotion of lottery games that are permitted by
the commission to be operated, utilized, or conducted.

"(h) The Alabama Lottery Corporation may conduct,
employ, include, or utilize only those lotteries approved by
the commission. Except as otherwise provided in this
amendment, the corporation may not operate, use, or employ,
and the commission, directly or indirectly, may not authorize
the operation, use, or employment of, any covered game by any
entity other than a racetrack.

"(i) The commission shall coordinate with local
communities and the racetracks in developing educational
programs and other social programs to enhance social and
public awareness of gaming-related issues.

"Section 6. Special Session for Enabling
Legislation."
"For the exclusive purpose of enacting general laws to implement this amendment, the Legislature shall meet in Extraordinary Session within 30 days after the effective date of this amendment on a day determined jointly by the Speaker of the House and the President Pro Tempore of the Senate. The Legislature may meet for no more than 12 legislative days and no other items of legislation may be considered during the Extraordinary Session except by a vote of two-thirds of each house.

"Section 7. Compact Negotiations.

"The Governor is hereby authorized and instructed to negotiate in good faith a compact with the Poarch Band of Creek Indians for the conduct and operation of covered games at the three locations in Alabama where, on the effective date of this amendment, the Poarch Band of Creek Indians conduct gaming. Any such compact shall then be submitted to the Legislature for ratification."

END OF PROPOSED AMENDMENT

Section 2. An election upon the proposed amendment shall be held in accordance with Sections 284 and 285 of the Constitution of Alabama of 1901, now appearing as Sections 284 and 285 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, and the election laws of this state on September 15, 2015.

Section 3. The appropriate election official shall assign a ballot number for the proposed constitutional amendment on the election ballot and shall set forth the
following description of the substance or subject matter of
the proposed constitutional amendment:

"Proposing an amendment to the Constitution of
Alabama of 1901, to establish an Alabama Lottery and the
Alabama Lottery Corporation; to authorize and regulate gaming
by the four existing racetracks in Alabama where pari-mutuel
wagering is currently legal; to levy a state gross receipts
tax and a local gross receipts tax on gaming revenue of the
racetracks; to levy a tax on vendors of gaming equipment; to
provide for the allocation of lottery proceeds and state
gaming tax proceeds; to create the Alabama Lottery and Gaming
Commission to implement, regulate, and administer gaming and
regulate and supervise the Alabama Lottery Corporation; to
authorize the Governor to negotiate a compact for gaming with
the Poarch Band of Creek Indians; and to authorize the
Legislature to pass general laws to implement the amendment.

"Proposed by Act ________.

This description shall be followed by the following
language:

"Yes ( ) No ( )."