

HB 678-FN-A-LOCAL – AS INTRODUCED

2013 SESSION

13-0357
08/09

HOUSE BILL ***678-FN-A-LOCAL***

AN ACT relative to games of chance and establishing a gaming oversight authority and video lottery gaming.

SPONSORS: Rep. Vaillancourt, Hills 15; Rep. Lambert, Hills 44

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill:

I. Regulates video gaming, establishes the division of gaming enforcement, and establishes the gaming oversight authority.

II. Determines the disbursement of all proceeds of video gambling with 60 percent of the proceeds distributed to the general fund.

III. Establishes a new fund in the state treasurer's office for machine income.

IV. Allows facility licensees to receive a cocktail lounge license.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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1 XI. "Video lottery location" means a state operated facility, within a location provided by the
2 facility licensee, authorized by the local community that contains video lottery machines operated in
3 accordance with this chapter.

4 XII. "Video lottery machines" means an electronic, mechanical, or computerized machine
5 licensed by the lottery commission, which upon the insertion of bills, coins, tokens, or any
6 representative of value is available to be played where, by chance or skill, or both, the player may
7 receive cash, cash equivalents, or tokens. Video lottery machines include, but are not limited to, slot
8 machines, video poker machines, and other lottery machines. A machine shall be considered a video
9 lottery machine notwithstanding the use of an electronic credit system making the deposit of bills,
10 coins, or tokens unnecessary. Video lottery machines do not include any redemption slot machines
11 and redemption poker machines as defined in RSA 647 or video poker machines or other similar
12 machines used for amusement purposes only.

13 287-H:2 Gaming Oversight Authority.

14 I. There is hereby established the New Hampshire gaming oversight authority. The gaming
15 oversight authority shall consist of the commissioner of the department of safety, the commissioner
16 of the department of resources and economic development, and the commissioner of the department
17 of revenue administration, or their respective designees. The commissioner of the department of
18 safety shall serve as the chairperson of the gaming oversight authority.

19 II. The gaming oversight authority through delegation to the division of gaming enforcement
20 shall exclusively establish, staff, manage, and operate video lottery locations at facilities licensed
21 under the provisions of this chapter. Facilities provided by the facility licensee shall contain non-
22 gaming resources such as, dining, liquor, hotel, and any other support resource approved by the
23 gaming oversight authority. The facility licensee shall, at a minimum, provide and pay for heat,
24 electricity, water, sewer, maintenance, and security surveillance infrastructure for the video lottery
25 location for which the facility licensee shall receive remuneration pursuant to RSA 287-H:17, III.

26 287-H:3 Duties of the Gaming Oversight Authority. The gaming oversight authority shall:

27 I. Issue licenses only after completion of the investigations set forth in this chapter. All
28 license applications shall be approved or denied no later than 150 days from the date of application.
29 No license issued under the provisions of this chapter shall be assigned, transferred, or sold without
30 a complete application and the approval of the gaming oversight authority and payment of a
31 \$150,000 application fee. No person or entity may own or have an interest in more than one facility
32 license.

33 II. Collect all license fees imposed upon any applicant and all fees imposed by this chapter.

34 III. Certify net machine income by inspecting records, conducting audits, having its agents
35 on site, or by other reasonable means.

36 IV. Establish a central computer system at a location of its choosing linking all video lottery
37 machines to a central computer to ensure control over the video lottery machines.

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1 V. Enter into lease agreements with up to 3 technology providers to provide video lottery
2 machines to the state. Lease agreements shall provide that the technology provider supply the
3 quantity and quality of video lottery machines determined by the gaming oversight authority in a
4 timely and efficient manner, and shall be paid with a percentage of the net machine income, as
5 provided in RSA 287-H:17, IV. The technology provider shall provide all maintenance and service of
6 its video lottery machines at no additional charge or fee to the state. Each agreement shall also
7 provide that the technology provider shall be required to replace 30 percent of its video lottery
8 machines on a yearly basis.

9 VI. Establish technical standards for approval of video lottery machines, including
10 mechanical and electrical reliability and security against tampering, as it may deem necessary to
11 protect the public from fraud or deception and to ensure the integrity of the operation.

12 VII. Not later than November 1 in each calendar year of this program, provide a report to
13 the legislative fiscal committee regarding the generation of revenue of video lottery machines. Such
14 report shall include any recommendations for legislation and any community concerns.

15 VIII. Have the authority to issue subpoenas and compel the attendance of witnesses, to
16 administer oaths, and require testimony of witnesses under oath.

17 IX. Make and keep records of all proceedings of its public meetings. A copy of the transcript
18 shall be made available to any person upon request and payment of the costs of preparing a copy.

19 X. Keep and maintain a list of all license applicants and a record of all actions taken with
20 respect to each applicant. A file and record of the actions by the gaming oversight authority shall be
21 open to public.

22 XI. Maintain such other files and records as it deems necessary. All records maintained by
23 the gaming oversight authority may be maintained in digital format or other technology, provided
24 that such information is capable of being produced in written form.

25 XII. Maintain the confidentiality of all information and data obtained by the gaming
26 oversight authority. Such information shall not be revealed in whole or in part except as otherwise
27 provided by law, upon the lawful order of a court of competent jurisdiction, lawfully executed and
28 served grand jury subpoenas, or with the approval of the attorney general, to a duly authorized law
29 enforcement agency.

30 XIII. Provide notice of the contents of any information or data released, except to a duly
31 authorized law enforcement agency or grand jury subpoena pursuant to paragraph XII, shall be
32 given to any applicant, registrant, or licensee in a manner prescribed by the rules adopted by the
33 gaming oversight authority.

34 XIV. If necessary, contract for and procure financial, economic, or security consultants and
35 any other technical and professional services as the authority deem necessary.

36 XV. Develop and provide an employee training program which shall include, but not be
37 limited to, information on state law, criminal and civil liability, and management practices.

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1 287-H:4 Rulemaking.

2 I. The gaming oversight authority shall have general responsibility for the implementation
3 of this chapter and shall adopt rules under RSA 541-A relative to:

4 (a) Hearing and deciding all license applications or recommendations for the suspension
5 or revocation of any license.

6 (b) Conducting all investigations required with regard to the application, suspension, or
7 revocation of any licensee or applicant.

8 (c) Conducting hearings pertaining to administrative violations or rules and collecting all
9 penalties assessed under the provisions of this chapter.

10 (d) Establishing standards and a reasonable fee structure for the licensing and renewal
11 of licenses for technology providers.

12 (e) Establishing technical standards for approval of video lottery machines, including
13 mechanical and electrical reliability and security against tampering, as it may deem necessary to
14 protect the public from fraud or deception and to ensure the integrity of operation.

15 (f) Establishing criteria for licensing, suspension, and revocation and the bidding process
16 under RSA 287-H:12.

17 (g) The value of prizes, which may be awarded, and the cost of play for each video lottery
18 game played on a video lottery machine, as recommended by the technology provider.

19 (h) Establishing employee qualifications, training, and background investigations for
20 prospective employees.

21 (i) Standards for the management, and operation, of all video lottery locations.

22 II. Pending the adoption of rules under RSA 541-A, and notwithstanding RSA 541-A:2, the
23 gaming oversight authority shall adopt interim rules including provisions for the publication of
24 public notice of the period of time for the submission of facility license applications and after public
25 hearing and within 60 days of the effective date of this chapter. Such interim rules shall
26 automatically expire upon the adoption of rules under RSA 541-A.

27 287-H:5 Restrictions. No member or employee of the gaming oversight authority, the
28 department of revenue administration, the department of resources and economic development, or
29 the department of safety shall have a fiduciary interest in any technology provider, facility licensee,
30 or centralized data provider.

31 287-H:6 Licensure of Technology Provider and Centralized Data Provider. No technology
32 provider or centralized data provider shall engage in the business of providing, installing, or
33 repairing video lottery machines used in this program without a license issued by the gaming
34 oversight authority.

35 287-H:7 Restriction on Technology and Centralized Data Provider. No technology provider or
36 centralized data provider or their employees shall be entitled to operate video lottery machines
37 within the state.

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1 287-H:8 Restriction of Minors.

2 I. No person under the age of 21 shall play a video lottery machine authorized by this
3 chapter.

4 II. No member or employee of any video lottery location, department of safety, the attorney
5 general's office, or the gaming oversight authority shall knowingly permit a person under the age of
6 21 to play or participate in any aspect of the playing of a video lottery machine.

7 III. Each violation of this section shall be punishable by a fine of no more than \$1,000 and
8 shall be payable by such person who violates paragraph I. If such violator is a state employee, then
9 the employee shall also be subject to appropriate sanctions in conformance with the adopted policies
10 and procedures of the division of gaming enforcement, and the department of administrative
11 services, division of personnel.

12 IV. Each violation of this section shall be punishable by a fine of no more than \$1,000 and
13 shall be payable by the employee or facility licensee that is found to have violated paragraph II.

14 287-H:9 Person Misrepresenting Age.

15 I. A person who falsely represents his or her age for the purpose of playing video lottery
16 machines shall be guilty of a misdemeanor. Any person who violates any of the provisions of this
17 section shall be fined for his or her first offense a minimum of \$250. No portion of this mandatory
18 minimum fine shall be waived, continued for sentencing or suspended by the court. A second or
19 subsequent offense shall carry a \$500 minimum fine.

20 II. Notwithstanding paragraph I or any other law to the contrary, any person who possesses
21 or uses or displays in any manner a false identification card, document, license or any other
22 document which represents such person's age for the purpose of playing video lottery machines shall
23 be fined a minimum of \$250. No portion of this mandatory minimum fine shall be waived, continued
24 for sentencing, or suspended by the court. The provisions of this paragraph shall not reduce the
25 maximum penalty which could be imposed for such an offense pursuant to paragraph I. A second or
26 subsequent offense shall carry a \$500 minimum fine.

27 III. An identification card issued under the provisions of RSA 260:21 shall be withdrawn for
28 violation of this section for 90 days. In addition, the director of the division of motor vehicles shall
29 withdraw, for 90 days, the identification card of any person who allows his or her card to be used or
30 displayed by another person for the purpose of playing video lottery machines.

31 287-H:10 Penalty for Tampering or Manipulating. Any person who, with the intent to
32 manipulate the outcome, payoff, or operation of a video lottery machine, manipulates the outcome,
33 payoff, or operation of any video lottery machine by physical, electronic, or mechanical means, shall
34 be guilty of a class A felony.

35 287-H:11 Video Lottery Machine Requirements.

36 I. No video lottery machine shall be used to conduct gaming unless it is identical in all
37 electrical, mechanical, and other aspects to a model, which has been specifically tested and licensed

1 for use by the gaming oversight authority.

2 II. All video lottery machines in operation shall pay out as winnings at least 92 percent on
3 an annual basis.

4 III. The gaming oversight authority shall establish the days and hours of operation of video
5 lottery locations and shall not be restricted by the facility licensee.

6 IV. No automatic teller machines shall be located within 150 feet of a video lottery machine.

7 287-H:12 Licenses; Number of Video Lottery Machines.

8 I. From the effective date of this chapter, the number of video lottery machines statewide
9 shall be limited to 5,000 to be distributed at the discretion and judgment of the gaming oversight
10 authority.

11 II. The gaming oversight authority shall issue not more than a total of 6 facility licenses in
12 the state of New Hampshire. Four facility licensees shall have 600 video lottery machines and 2
13 facility licensees shall have 1,300 video lottery machines. Prior to issuing any facility licenses and
14 when there are fewer than 6 facility licenses, the gaming oversight authority shall issue facility
15 licenses pursuant to the bidding process described in paragraph III. Eligibility shall be based on, but
16 not limited to the following:

17 (a) Evidence provided by the applicant that the applicant has received any required local
18 approval.

19 (b) Regional location of prospective facility licensee, provided that no more than one
20 facility licensee shall operate in each county.

21 (c) A detailed economic plan, filed with the gaming oversight authority, for the
22 municipality and the surrounding region where the prospective facility licensee is located with
23 supporting documentation to explain the following:

24 (1) Unemployment in the area.

25 (2) Direct and indirect employment gain.

26 (3) Effect on tourism-based economy.

27 (4) Effect on regional economic development.

28 (5) Tourist trends.

29 (d) A business plan, filed with the gaming oversight authority, to support video lottery
30 machines.

31 (e) Qualifications of those persons who own or manage the prospective licensee facility.

32 (f) Regional population.

33 (g) Vehicle traffic.

34 (h) Total square footage of the facility and total acreage of such facility.

35 (i) Availability of suitable infrastructure.

36 (j) Availability of adequate parking.

37 (k) Other information that the gaming oversight authority may require.

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1 III. Within 60 days of the effective date of this chapter and whenever there are fewer than 6
2 facility licensees, the gaming oversight authority shall solicit sealed bids through a competitive
3 bidding process for the available facility license or licenses. The minimum bid for the facility licenses
4 for 600 video lottery machines shall be \$5,000,000. The minimum bid for the facility licenses for
5 1,300 video lottery machines shall be \$10,000,000. If there are more bidders who are equally eligible
6 than the number of available facility licenses, the gaming oversight authority shall conduct a
7 drawing to determine which bidder or bidders will be issued facility licenses.

8 287-H:13 Application and License Requirements.

9 I. A facility licensee applicant shall obtain a facility license from the gaming oversight
10 authority. An applicant shall complete and sign an application on the forms prescribed by the
11 gaming oversight authority. The application shall include the full name, residence, date of birth, and
12 other personal identifying information of the applicant, and if a corporation or other form of business
13 enterprise, the same information shall be provided with respect to each partner, trustee, officer,
14 director, and any shareholder or other holder who owns more than 3 percent of the legal or beneficial
15 interests of such entity. All such business entities shall be registered with the secretary of state.

16 II. The gaming oversight authority shall refer applications to the attorney general who shall
17 conduct an investigation. The investigation may be conducted through any appropriate state or
18 federal law enforcement system and may seek information as to the applicant's financial, criminal, or
19 business background, or any other information which the attorney general, in his or her sole
20 discretion, may deem relevant to the subject's fitness to be associated with the ownership or
21 management of the operation of a facility licensee in New Hampshire, including but not limited to,
22 the subject's character, personal associations, and the extent to which the subject is properly doing
23 business in the manner in which it purports to operate. The attorney general shall report the results
24 of the investigation to the gaming oversight authority within 90 days after the receipt of the
25 application. Notwithstanding any other law to the contrary, the results of any such investigation
26 shall be confidential and shall not be subject to disclosure or to public inspection.

27 III. In any investigation conducted pursuant to paragraph II, the attorney general or any
28 duly authorized member of the attorney general's staff may subpoena the attendance of witnesses
29 and require the production of such correspondence, documents, books and papers as deemed
30 advisable, and for purposes of this section, may administer oaths and take the testimony of
31 witnesses.

32 287-H:14 Licensure Requirements.

33 I. No facility license shall be issued by the gaming oversight authority unless the applicant
34 has proven to the satisfaction of the gaming oversight authority by clear and convincing evidence:

35 (a) The financial stability based on audited financial statements, integrity, and
36 responsibility, considering, without limitation, bank references, business and personal income and
37 disbursement schedules, tax returns and other reports filed with governmental agencies, and

1 business and personal accounting and check records and ledgers.

2 (b) The trustworthiness and good reputation of all financial backers, investors,
3 mortgagees, bondholders, and holders of indentures, notes and other evidences of indebtedness of the
4 applicant.

5 (c) The good character, honesty and integrity, considering, without limitation,
6 information pertaining to reputation, criminal record, business activities, and financial affairs
7 covering at least the 10-year period immediately preceding the filing of the application.

8 (d) In addition, no facility license shall be issued by the gaming oversight authority to
9 any applicant unless the applicant has proven to the satisfaction of the gaming oversight authority
10 by clear and convincing evidence that each director, officer or similar principal employee and each
11 direct or indirect owner satisfies the standards for licensure contained in RSA 287-H:13.

12 (e) The gaming oversight authority may, in its discretion, waive the qualification
13 requirement for any such person who is not significantly involved in the activities of the applicant,
14 does not have the ability to significantly influence or control the applicant, or for other good cause,
15 only when written justification is provided.

16 (f) Except as provided in this chapter, no person who owns, directly or indirectly, legally
17 or beneficially, 5 percent or less of the equity securities or 50 percent or less of the outstanding debt
18 securities of a publicly traded holding company of an applicant for a facility license shall be required
19 to be qualified pursuant to the provisions of this section prior to the issuance of such a license to the
20 applicant.

21 (g) If a facility licensee has 25 or fewer holders of its equity securities, either directly or
22 indirectly, legally or beneficially, then each such holder shall satisfy the standards of this chapter.

23 II. No technology provider's license shall be issued by the gaming oversight unless the
24 applicant has demonstrated to the satisfaction of the gaming oversight authority by clear and
25 convincing evidence that it satisfies the standards contained in paragraph I of this section. The
26 gaming oversight authority shall establish the form of application that shall be completed by each
27 applicant for a technology provider's license. Each technology provider license applicant shall be
28 subject to the investigation set forth in RSA 287-H:13 except that all investigatory reports shall be
29 provided to the gaming oversight authority.

30 III. All information and data required by the gaming oversight authority, or the division of
31 gaming enforcement to be furnished pursuant to this chapter, or which may otherwise be obtained by
32 the gaming oversight authority, or the division of gaming enforcement in the performance of their
33 duties under this chapter, except information regarding net machine income, shall be considered to
34 be confidential and shall not be revealed in whole or in part except as otherwise provided by law, or
35 upon the lawful order of a court of competent jurisdiction, or with the approval of attorney general to
36 a duly authorized law enforcement agency.

37 IV. No licensee or any individual or entity that is an owner of, or has a financial interest in

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1 or with the licensee shall be permitted to make a political contribution as defined by RSA 664:2, VIII.

2 287-H:15 License and Investigation Fees. A non-refundable license application fee for each class
3 or type of license to be issued under this chapter shall be \$150,000. Renewal fees shall be \$150,000
4 for each class or type of license. Upon application for a facility license, the applicant shall pay a one-
5 time fee of 10 percent of the applicant's bid amount under RSA 287-H:12 which will be used by the
6 gaming oversight authority as start-up capital at each location for training and an initial bank. If
7 the facility license applicant is not issued a license under RSA 287-H:12, the one-time application fee
8 shall be returned to the applicant by the gaming oversight authority. If the facility license applicant
9 is issued a license under RSA 287-H:12, the one-time application fee shall be subtracted from the
10 amount of the bid owed by the applicant. Upon issuance of a facility licensee, the facility licensee
11 shall pay the amount of bid owned to the gaming oversight authority. Fifteen percent of such
12 amount shall be used by the gaming oversight authority as start-up capital at each location for
13 training and an initial bank and 75 percent shall be deposited in the general fund.

14 287-H:16 Term of License. Any facility license or technology provider's license issued pursuant
15 to this chapter and any renewal thereof shall be valid for 5 years unless earlier suspended or revoked
16 by the gaming oversight authority. All licenses issued under this chapter shall be issued as a
17 privilege and not by right. No person or entity may claim any sort of property right to, or in
18 conjunction with, any license issued under this chapter. The gaming oversight authority shall be
19 informed within 10 days of any anticipated change in ownership or stockholders of a licensee that
20 would normally be subject to investigation and licensing requirements in RSA 287-H:15. Failure to
21 inform the gaming oversight authority of said anticipated changes shall result in license revocation.

22 287-H:17 Distribution of Net Income; Machine Income Fund. There is hereby established a
23 machine income fund in the office of the state treasurer to be administered by the state treasurer.
24 The fund shall be nonlapsing and continually appropriated to the state treasurer for the purposes set
25 forth in this section. The state treasurer shall distribute the funds on the fifth of each month as
26 follows:

27 I. Sixty percent of the annual net machine income shall be deposited in the general fund.

28 II. Twelve percent of the net machine income shall be paid to the gaming oversight authority
29 to be used to pay for the establishment, administration, and operation of the division of gaming
30 enforcement.

31 III. Nineteen percent of the net machine income shall be paid to the facility licensee as a
32 gross lease.

33 IV. Six percent of the net machine income shall be paid to the technology provider for the
34 leasing and maintenance of the video lottery machines.

35 V. Two percent of the net machine income shall be paid to the centralized data provider to
36 carry out the responsibilities outlined in this chapter.

37 VI. One percent of the net machine income shall be paid to the city or town where the facility

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1 licensee facility is located. Revenue will be distributed based on the number of video lottery
2 machines in that location.

3 287-H:18 Gaming Oversight.

4 I. The gaming oversight authority or the division of gaming enforcement shall be present at
5 all facility licensee location at which video lottery machines are operated by the state at all times
6 whether the facility is open to the public or not.

7 II. The division of gaming enforcement shall be present at all times when a video lottery
8 machine is opened to remove or insert any drop box, hopper, or other mechanism containing money,
9 tokens, or other items of value. The division of gaming enforcement shall be present in the count
10 room at all times that money, tokens, or other items of value utilized in video lottery machines are
11 counted.

12 287-H:19 Hearings; Investigations; False Statement; Enforcement Policy.

13 I. The gaming oversight authority shall adopt and publish rules pursuant to RSA 541-A, to
14 govern its proceedings and to regulate the mode and manner of all investigations and hearings before
15 it.

16 (a) All hearings before the gaming oversight authority shall be in accordance with
17 RSA 541-A:31-36. In any such investigation or hearing the gaming oversight authority shall not be
18 bound by the technical rules of evidence.

19 (b) The gaming oversight authority, or any member, may subpoena witnesses and
20 administer oaths in any proceeding or examination instituted before or conducted by it, and may
21 compel, by subpoena, the production of any accounts, books, contracts, records, documents,
22 memoranda and papers of any kind whatever.

23 (c) Witnesses summoned before the superior court, and such summons issued by any
24 justice of the peace shall have the same effect as though issued for appearance before such court.
25 Justices of the peace and all other magistrates empowered to issue subpoenas and compel the
26 attendance of witnesses in the courts of this state shall have the same power to compel their
27 attendance and the production of evidence in any proceeding before the gaming oversight authority.

28 (d) The gaming oversight authority may apply to the superior court, under the provisions
29 of RSA 491:19-20, to have punished for contempt any witness who refuses to obey a subpoena, or who
30 refuses to be sworn or affirmed to testify, or who is guilty of any contempt after summons to appear.

31 II. If any false statement is knowingly made in any statement under oath which may be
32 required by the provisions of this title or by the gaming oversight authority, the person making the
33 same shall be deemed guilty of perjury. The making of any such false statement in any such
34 application or in any such accompanying statements, whether made with or without the knowledge
35 or consent of the applicant, shall, in the discretion of the gaming oversight authority, constitute
36 sufficient cause for the revocation of the license.

37 III.(a) The gaming oversight authority shall adopt by rule, under RSA 541-A, a formal

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1 enforcement policy for licensees under its jurisdiction. This policy shall specify the disciplinary
2 action which the gaming oversight authority shall take for violations of various laws under its
3 jurisdiction. The enforcement policy shall also specify mitigating and aggravating factors which the
4 gaming oversight authority shall consider in determining penalties for specific actions. The gaming
5 oversight authority shall not suspend or revoke a license until the licensee has been provided a
6 hearing under RSA 541-A.

7 (b) In applying its enforcement policy, the gaming oversight authority shall establish
8 and enforce specific determinate penalties for specific offenses. The gaming oversight authority shall
9 not apply penalties such as license suspensions for indefinite periods of time.

10 287-H:20 Suspension or Revocation; Administrative Fines.

11 I. If any licensee violates any of the provisions of law or any of the rules of the gaming
12 oversight authority adopted under this title, the license may be suspended or revoked after notice
13 and hearing, in accordance with RSA 541-A:31-36. Notwithstanding any other provisions of this
14 chapter, the gaming oversight authority, after the appropriate hearing, may impose a fine of a
15 specific sum, which shall not be less than \$1,000 nor more than \$50,000 for any one offense. Such a
16 fine may be imposed instead of, or in addition to, any suspension or revocation of a license by the
17 gaming oversight authority.

18 II. Notwithstanding any other provision of law, the gaming oversight authority may accept
19 at any time, a petition from the governing body of a city or town who has voted to accept the
20 provisions of RSA 287-H, to revoke a license held by a facility licensee who is located within that
21 community. Any petition filed under this paragraph shall state with particularity all relevant facts
22 and circumstances that sustain the opinion of the petitioner to revoke a license. A licensee against
23 whom a petition is filed shall be entitled to a public hearing before any decision by the gaming
24 oversight authority. All proceedings conducted in conjunction with this paragraph shall conform to
25 the requirements of RSA 541-A.

26 III. Appeals from a decision of the gaming oversight authority shall be in accordance with
27 RSA 541.

28 287-H:21 Penalties. Any person who violates any of the provisions of this chapter or any of the
29 rules adopted pursuant to this chapter shall be guilty of a misdemeanor if a natural person, or guilty
30 of a felony if any other person. In case of appeal by a licensee, the license of such licensee may be
31 suspended at the discretion of the gaming oversight authority during the pendency of such appeal.

32 287-H:22 Prosecutions. The gaming oversight authority shall appoint gaming investigators
33 whose primary function shall be the proper prosecution of this chapter. The investigators shall have
34 all the powers of the sheriff in any county, with reference to enforcement of all laws either in
35 cooperation with, or independently of, the officers of any county or town. The gaming oversight
36 authority shall have the primary responsibility for the enforcement of all video lottery gaming. Any
37 person violating the provisions of any law may be prosecuted by the gaming oversight authority or

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1 any of its investigators as provided in this section, or by the attorney general, or by county or city
2 attorneys, or by sheriffs or their deputies, or by police officials of towns.

3 287-H:23 Interference With Gaming Investigators. It shall be unlawful to resist or attempt to
4 resist arrest by a gaming investigator, or to obstruct, or to intimidate or interfere with a gaming
5 investigator in the performance of his or her duty. Any person who violates any of the provisions of
6 this section shall be guilty of a misdemeanor.

7 287-H:24 Fines.

8 I. All fines imposed by any court and collected for the violation of the provisions of this
9 chapter shall be paid to the state, county, or town, the officials of which instituted the prosecution.

10 II. All fines imposed by the gaming oversight authority shall be deposited into the general
11 fund.

12 287-H:25 Procedures for Adoption by Local Community.

13 I. Any town or city in which a facility licensee location is situated may adopt the provisions
14 of RSA 287-H, to allow the operation of electronic games of chance, in the following manner:

15 (a) In a town, the question shall be placed on the warrant of a special or annual town
16 meeting under the procedures set out in RSA 39:3, and shall be voted on a ballot; provided, however,
17 if the question is placed on the warrant at a special town meeting, it shall be the only question at
18 such special town meeting. In a city, the legislative body may vote to place the question on the
19 official ballot for any regular municipal election, or, in the alternative, shall place the question on the
20 official ballot for any regular municipal election upon submission to the legislative body of a petition
21 signed by 5 percent of the registered voters.

22 (b) The selectmen, aldermen, or city council shall hold a public hearing on the question
23 at least 15 days but not more than 30 days before the question is to be voted on. Notice of the
24 hearing shall be posted in at least 2 public places in the municipality and published in a newspaper
25 of general circulation at least 7 days before the hearing.

26 (c) The wording of the question shall be substantially as follows: "Shall we adopt the
27 provisions of RSA 287-H, allowing the operation of electronic games of chance at the licensed facility
28 located within the town and operated by the state?"

29 II. If a majority of those voting on the question vote "Yes," RSA 287-H shall apply within the
30 city or town.

31 III. If the question is not approved, the question may later be voted upon according to the
32 provisions of paragraph I, provided, however, that the town may consider the question at no more
33 than one special town meeting and the annual town meeting in the same calendar year.

34 287-H:26 Declaration of Limited Exemption. Pursuant to section 2 of an act of Congress of the
35 United States entitled "An act to prohibit transportation of gambling devices in interstate and
36 foreign commerce," approved January 2, 1951, being Chapter 1194, 64 Stat. 1134, and also
37 designated as 15 U.S.C. sections 1171-1177, the state of New Hampshire, acting by and through the

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1 duly elected and qualified members of its legislature, does hereby, in accordance with and in
2 compliance with the provisions of that section 2 of that act of Congress, declare and proclaim that
3 section 2 of that act of Congress shall not apply to any gambling device in this state where the
4 transportation of such a device is specifically authorized by and done in compliance with the
5 provisions of this chapter and any rules adopted pursuant to it, and that any such gambling device
6 transported in compliance with state law and rules shall be exempt from the provisions of that act of
7 Congress.

8 287-H:27 Legal Shipment of Gaming Devices into New Hampshire. All shipments into this state
9 of gaming devices, the registering, recording and labeling of which has been duly made by the
10 manufacturer or dealer in accordance with sections 3 and 4 of an act of Congress of the United States
11 entitled “An act to prohibit transportation of gambling devices in interstate and foreign commerce,”
12 approved January 2, 1951, being chapter 1194, 64 Stat. 1134, and also designated as 15 U.S.C.
13 sections 1171-1172, shall be deemed legal shipments into this state.

14 2 New Paragraph; Attorney General; Gaming Investigators. Amend RSA 21-M:3 by inserting
15 after paragraph VII the following new paragraph:

16 VII-a. The attorney general may hire investigators or contract for investigatory services to
17 facilitate background investigations required under RSA 287-H, and said investigators shall be paid
18 from licensing fees paid under RSA 287-H:15.

19 3 New Sections; Division of Gaming Enforcement. Amend RSA 21-P by inserting after section 8
20 the following new sections:

21 21-P:8-a Division of Gaming Enforcement.

22 I. There is hereby established a division of gaming enforcement under the supervision of an
23 unclassified director of gaming enforcement whom shall be responsible for the following functions, in
24 accordance with applicable laws:

25 (a) Manage and hire employees for the day-to-day operation of all video lottery locations
26 ensuring the integrity of the program. Gaming enforcement employees shall be assigned to all
27 locations and will be present at all times whether the location is open or closed.

28 (b) Investigate violations of RSA 284 or RSA 287-H and the rules adopted under the
29 provisions of RSA 284 or RSA 287-H.

30 (c) Report the results of any investigation conducted to the gaming oversight authority.

31 (d) Participate in any hearing conducted by the gaming oversight authority.

32 II. The commissioner of safety shall organize the division into such units as the
33 commissioner deems necessary.

34 21-P:8-b Powers and Duties; Gaming Enforcement. The director of gaming enforcement shall be
35 the chief administrative officer of the division of gaming enforcement and shall have the following
36 powers and duties:

37 I. The director shall manage all operations of the division of gaming enforcement and the

1 daily operation of video lottery locations and administer and enforce the laws with which the division
2 is charged. The director shall report directly to the gaming oversight authority.

3 II. The director shall have every power enumerated in the laws, whether granted to the
4 director, the division, or any administrative unit of the division. In accordance with these provisions,
5 the director shall:

6 (a) Biennially compile a comprehensive program budget which reflects all fiscal matters
7 related to the operation of the division and each program and activity of the division.

8 (b) Adopt all rules of the division with approval of the gaming oversight authority,
9 pursuant to RSA 541-A.

10 (c) Exercise general supervisory and appointing authority over all division employees,
11 subject to applicable personnel statutes and rules.

12 (d) Delegate authority to subordinates as the director deems necessary and appropriate,
13 except that rulemaking authority shall not be delegated. All such delegations shall be made in
14 writing, shall be disseminated, shall clearly delineate the authority delegated and the limitations
15 thereto, and shall be kept on file in the director's office.

16 (e) Adopt practices which will improve the efficiency of the division and the provision of
17 services to the citizens of the state.

18 (f) Provide cooperation, at the request of the heads of administratively attached agencies
19 in order to:

20 (1) Minimize or eliminate duplication of services and jurisdictional conflicts;

21 (2) Coordinate activities and resolve problems of mutual concern; and

22 (3) Resolve by agreement the manner and extent to which the division shall provide
23 budgeting, recordkeeping and related clerical assistance to administratively attached agencies.

24 (g) Give bond, and require division directors to give bond, to the state as specified in
25 RSA 93-B.

26 (h) Where functions of divisions overlap or a function assigned to one division could
27 better be performed by another division, recommend appropriate legislation to the next regular
28 session of the general court.

29 III. The director shall adopt such reasonable internal practices and procedures, which shall
30 not be considered rules subject to the provisions of RSA 541-A, as may be necessary to carry out the
31 duties of the division and its divisions, consistent with this chapter, including without limitation a
32 comprehensive manual of procedures for the operation of video lottery locations.

33 IV. The director may not accept, on behalf of the division, any grants of money without first
34 obtaining the express consent of the legislative fiscal committee established by RSA 14:30-a.

35 V. The director shall have the authority to adopt rules, pursuant to RSA 541-A, necessary to
36 assure the continuation or granting of federal funds or other assistance not otherwise provided for by
37 law.

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1 VI. The director may enter into contracts for services, supplies, or other needs of the
2 division.

3 VII. The director shall report annually to the gaming oversight authority with respect to the
4 division's operation for the preceding year, and render such other reports as the governor and
5 council, the general court, or the gaming oversight authority shall from time to time request.

6 VIII. The director shall develop, publish, and periodically revise an annual comprehensive
7 plan for the division which shall indicate, among other things, the division's goals, objectives,
8 resources, current conditions, and needs. The director shall annually submit such comprehensive
9 plan to the gaming oversight authority.

10 IX. The director, the gaming oversight authority, the commissioner of the department of
11 safety, and if necessary, the sweepstakes commission shall jointly establish procedures for sharing
12 data, background investigation, technology and technology providers, and facilities. These
13 procedures shall not be considered rules subject to RSA 541-A and shall be established so as to
14 ensure compliance with state and federal confidentiality and privacy laws.

15 X. If this section conflicts with other powers and duties specifically granted by statute to the
16 director, the specific powers and duties shall control. If this section conflicts with other statutes
17 specifically limiting the powers of the director, the specific limitations shall control.

18 4 Director of Gaming Enforcement; Salary. The salary for the unclassified position authorized
19 in section 3 of this act shall be established as provided in RSA 14:14-c, RSA 17-A:7, and RSA 94:1-d.

20 5 New Subparagraph; Authorized Video Lottery of Games of Chance Machines Not Prohibited.
21 Amend RSA 647:2, V by inserting after subparagraph (c) the following new subparagraph:

22 (d) Video lottery machines authorized pursuant to RSA 287-H.

23 6 New Subparagraph; Application of Receipts; Machine Income Fund. Amend RSA 6:12, I(b) by
24 inserting after subparagraph (310) the following new subparagraph:

25 (311) Moneys deposited in the machine income fund established under RSA 287-
26 H:17.

27 7 New Paragraph; Facility Licensee; Cocktail Lounge License. Amend RSA 178:20 by inserting
28 after paragraph V the following new paragraph:

29 VI. The liquor commission may issue a special license to a person holding a facility license as
30 defined by RSA 287-H:1, IV. Such special license shall allow the sale of liquor, wine, and beverages
31 within the facility licensee location, including dining room, function room, gaming room, lounge, or
32 any other area designated by the commission, without regard to whether meals are served therein,
33 but only during the time gaming is being conducted under RSA 287-H. A person licensed under this
34 section shall comply with RSA 179:44.

35 8 Effective Date. This act shall take effect upon its passage.

HB 678 FISCAL NOTE

AN ACT relative to games of chance and establishing a gaming oversight authority and video lottery gaming.

FISCAL IMPACT:

The Department of Safety, Department of Justice, Judicial Council, Judicial Branch, New Hampshire Municipal Association, Department of Revenue Administration, New Hampshire Association of Counties, Liquor Commission, Racing and Charitable Gaming Commission, Lottery Commission, and Department of Corrections state this bill, **as introduced**, will increase state and local revenue, and state, county, and local expenditures by an indeterminable amount in FY 2014 and each year thereafter. There will be no fiscal impact on county revenue.

METHODOLOGY:

The Department of Safety states this bill allows state-operated video lottery gaming at facilities licensed by the state, and establishes a new Division of Gaming Enforcement within the Department. In addition, the bill creates a Gaming Oversight Authority consisting of the commissioners of the Departments of Safety, Revenue Administration, and Resources and Economic Development, or their respective designees. The Authority is to be chaired by the Commissioner of the Department of Safety, and will have the ability, through delegation to the Division of Gaming Enforcement, to establish, staff, manage, and operate video lottery locations at licensed facilities. The Department states the bill will likely result in increased state revenue, but it is unable to determine the extent of the increase. Following are several provisions of the bill that will impact state and municipal revenue:

- Applicant facilities will need to pay an application fee of \$150,000 in order to obtain a license. License renewal fees will likewise be \$150,000, with each license valid for five years unless revoked by the Authority.
- The bill authorizes a maximum of six licensed facilities throughout the state. Four facilities will be licensed for 600 video lottery machines, while two will be licensed for 1,300 video lottery machines. The bill states the minimum bid for facilities housing 600 machines shall be \$5 million, while the minimum bid for facilities housing 1,300 machines shall be \$10 million. Seventy-five percent of the revenue generated will be deposited into the state general fund, 15 percent will be used by the Gaming Oversight Authority as start-up capital at each location for training and an initial bank, and ten

percent, which is collected in advance by the Authority and used for initial start-up costs, will be returned to the applicant.

- All video lottery machines shall pay out as winnings at least 92 percent on an annual basis. The remainder constitutes net machine income and will be deposited into a machine income fund administered by the state treasurer.

Net machine income will be distributed as follows:

- 60% to the state general fund;
- 19% to the facility licensee as a gross lease;
- 12% to the Gaming Oversight Authority for the establishment, administration, and operation of the Division of Gaming Enforcement;
- 6% percent to the technology provider(s) for the leasing and maintenance of video lottery machines;
- 2% to the centralized data provider selected by the Authority; and
- 1% to the city or town where the facility licensee is located.

The bill also establishes a variety of fines for violations of the bill's provisions.

The bill requires the Division of Gaming Enforcement within the Department of Safety to staff all six facility locations with employees to manage day-to-day operations and be on site 24 hours per day. The Department states that other than a Director, the bill does not establish positions for the Division. The Department states that because insufficient information currently exists regarding the number of employees, equipment costs, building space, and vehicles needed, it is unable to estimate how much cost would be required to staff all licensed facilities.

The Department of Justice states the bill creates a variety of administrative, civil, and criminal penalties for violations of the bill. In addition, the bill authorizes the Attorney General to conduct background investigations of applicants for a license. The Department anticipates that the Gaming Oversight Authority and the Division of Gaming Enforcement will require personnel from the Department's Civil Bureau to assist with the promulgation of rules, administrative enforcement of violations, and otherwise provide general legal counsel. The Department assumes there will be a heavy workload initially when it is required to investigate applicants, and that this workload will decline substantially after the investigations have been completed. Accordingly, the Department anticipates costs will be highest during FY 2014. The Department estimates it will need a full-time attorney in FY 2014, as well an investigator, financial research analyst, and paralegal for three months during FY 2014. The Department

expects to need only a part-time attorney and paralegal in subsequent years, and estimates personnel, benefits, and miscellaneous costs as follows: \$212,517 in FY 2014, \$56,417 in FY 2015, \$57,819 in FY 2016, and \$59,254 in FY 2017.

The Judicial Council states the bill establishes a variety of new misdemeanor- and felony-level offenses, including the following:

- Proposed RSA 287-H:9 makes it an undesignated misdemeanor to falsely represent one's age for the purpose of playing a video lottery machine;
- Proposed RSA 287-H:10 makes it a class A felony to tamper with a video lottery machine to manipulate the operation or payoff of the machine;
- Proposed RSA 287-H:19, I(d) makes it an undesignated misdemeanor to fail to comply with a subpoena issued by the Gaming Oversight Authority;
- Proposed RSA 287-H:19, II makes it a class B felony to make a false statement under oath when that statement is required under the provisions of the title; and
- Proposed RSA 287-H:21 makes it an unspecified misdemeanor to interfere with a gaming investigator in the performance of his or her duties.

The Council states it has no way of knowing the number of above charges that will be brought under the bill. Nevertheless, the possibility of increased charges being brought may increase the number of cases in which criminal defendants seek appointed counsel at state expense. The Council states if an individual is found to be indigent, the state will be subject to expenditures of approximately \$275 for each misdemeanor case and \$756 for each felony case handled by a public defender or contract attorney. If a case were to go to assigned council, the cost would be as follows: \$60 per hour with a cap of \$1,700 for a juvenile delinquency case, \$60 per hour with a cap of \$1,400 for a misdemeanor case, and \$60 per hour with a cap of \$4,100 for a felony case. In addition, periodic reviews of juvenile cases cost an additional \$206 per review hearing. The Council states expenditures would increase in an appeal were filed, or if services are requested by counsel and approved by the court during the defense of a case or during an appeal.

The Judicial Branch states the bill establishes a variety of new violation, misdemeanor, and felony-level offenses. In addition to the offenses noted above by the Judicial Council, the Branch states proposed RSA 287-H:3, XII and 14, III would allow for a court order to overcome the confidentiality of certain information, and proposed RSA 287-H:20, III would allow administrative appeals from the Gaming Oversight Authority to the state Supreme Court on all matters before the Authority including licensing, enforcement, and violations which could result in civil penalties of up to \$50,000. The Branch has no information to estimate how many charges will be brought as a result of the bill to determine the fiscal impact on expenditures.

The Branch can, however, estimate the cost of processing each type of case. The Branch states the case cost estimates are based on data that is more than seven years old and does not reflect the changes to the courts over that same period of time or the impact these changes may have on the processing of these types of cases. The Branch estimates case costs as follows:

	FY 2014	FY 2015
Violation	\$42.85	\$44.36
Class B Misdemeanor	\$44.32	\$45.84
Class A Misdemeanor	\$62.71	\$64.40
Routine Felony	\$405.37	\$415.78
Routine Equity Case	\$220.99	\$228.71
Complex Equity Case	\$636.90	\$648.60

The New Hampshire Municipal Association states the bill provides that one percent of the net machine income from a given video lottery location shall be paid to the city or town where the facility is located. The Association states that while this provision will create an increase in revenue for municipalities that host gaming facilities, it is unable to estimate what the amount of the increase will be. The Association also states it is unable to estimate the impact, if any, of increased expenditures for law enforcement or other services that may result from gaming facilities being located within a municipality. The Association further states there may be fiscal effects on neighboring municipalities; while the bill states that a facility may not be operated without local approval, the Association states neighboring municipalities may incur increased expenditures if a neighboring municipality approves a facility.

The Department of Revenue Administration states it is unable to determine the fiscal impact of the bill because the Department does not have data on which to base projections of potential revenue from licenses, fines, or machine income. In addition, the Department states it will need to hire an employee in order to fulfill the duties of the Gaming Oversight Authority. The Department anticipates creating a Director of Program Operations at an unclassified labor grade EE. The Department anticipates this position will increase expenditures as follows:

	FY 2014	FY 2015	FY 2016	FY 2017
Director of Program Operations salary (labor grade EE)	\$59,120	\$62,989	\$66,858	\$70,727
Benefits	\$27,865	\$30,060	\$32,363	\$34,799
Total	\$86,985	\$93,049	\$99,221	\$105,526

The New Hampshire Association of Counties notes that the bill establishes various new criminal penalties, and states to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.

The State Liquor Commission states the bill allows it to issue a cocktail lounge license to each of the six facilities, and notes that a cocktail lounge license is \$1,200 per year. The Commission therefore expects the bill to result in increased revenue of \$7,200 ($\$1,200 * 6$ facilities) per year beginning in FY 2014. The Commission assumes no additional enforcement personnel will be needed as a result of these six licenses.

The Racing and Charitable Gaming Commission states it does not appear to have a role in the Gaming Oversight Authority. The Commission states that by authorizing non-charitable gaming, the bill may result in a reduction of revenues generated by charitable gaming. The Commission states the extent of this reduction, if any, is indeterminable.

The Lottery Commission states the Commission does not appear to have a role in the newly created authority. The Commission states the bill appears to grant licensing authority to the Commission in Chapter 287-H(1)(XII), but elsewhere, such as Chapters 287-H(2)(II) and (3), appears to grant exclusive governance to the newly created Gaming Oversight Authority. The Commission states that given the uncertainty, it is unable to estimate the bill's fiscal impact. The Commission also states that by authorizing video lottery machines, the bill may result in an indeterminable reduction in lottery ticket revenue. The Commission notes, however, that lottery ticket revenue may fall as a result of the introduction of casino gaming in Massachusetts, regardless of whether New Hampshire authorizes expanded gaming. The Commission states that authorizing expanded gaming in New Hampshire may result in a smaller reduction in lottery ticket revenue than if gaming were expanded only in Massachusetts.

The Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be found guilty of a felony as a result of this legislation. The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2012 was \$35,071. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2012 was \$608.

Additional Estimates of Video Lottery Machine Revenue

None of the agencies represented in this fiscal note prepared an estimate of the revenue increase that may result from this bill. In order to determine potential revenue, the Office of Legislative Budget Assistant collected publicly reported statistics on net machine income for facilities in the following states: Maine, Maryland, Rhode Island, Pennsylvania, and Connecticut. The data are from the most recent year publicly available, which was FY 2011 in the case of Maine and FY 2012 in the case of each other state. The states are in order from lowest to highest net revenue per machine per day.

<u>State</u>	<u># of Video Lottery Machines Statewide</u>	<u>Net Revenue Per Machine Per Day</u>
Maine	1,000	\$162.89
Maryland	5,471*	\$212.34
Rhode Island	5,850	\$246.00
Pennsylvania	26,785*	\$257.91
Connecticut	12,485	\$285.98

*Not all of these terminals were operational the entire year; net revenue per machine per day has been adjusted to account for this.

Several of these states have multiple facilities offering video lottery games, and revenue per machine can vary significantly between facilities. For example, Pennsylvania had ten facilities at which video lottery machines were available for the entire fiscal year, ranging from a low of \$196.22 to a high of \$324.62 per machine per day. Likewise, Rhode Island had two casinos at which video lottery machines were available, one of which averaged \$128 per machine per day, and one of which averaged \$274 per machine per day. It should be noted that the two states that generate the highest net revenue, Connecticut and Pennsylvania, house destination casinos, which may account for the relatively high revenue per machine. It should also be noted that the minimum payout percentage of 92 percent established by this bill is slightly higher than that in some other states. For example, Pennsylvania law mandates video lottery machines pay out at least 85 percent in winnings (in practice, machines in Pennsylvania paid an average of 90.3 percent), while Maine mandates machines pay out 89 percent (in practice, machines in Maine paid an average of 91.1 percent). The LBAO was unable to find data on whether and to what extent the minimum payout percentage affects machine revenue.

Using the high and low from each state's average net revenue per machine per day yields the following estimates of yearly revenue that may result from this bill. These estimates assume all 5,000 machines permitted by the bill are operational. It should be noted that these estimates do not account for any impact the presence of video lottery machines in Massachusetts may have on New Hampshire machine revenue.

	Low Estimate (\$162.89 per machine, per day)	High Estimate (\$285.98 per machine, per day)
Total revenue, assuming 5,000 machines:	\$297,274,250	\$521,913,500

Revenue allocation:

General fund (60%)	\$178,364,550	\$313,148,100
Facility licensee (19%)	\$56,482,108	\$99,163,565
Gaming oversight authority (12%)	\$35,672,910	\$62,629,620
Technology providers (6%)	\$17,836,455	\$31,314,810
Centralized data provider (2%)	\$5,945,485	\$10,438,270
Municipality in which facilities are located (1%)	\$2,972,743	\$5,219,135

In addition, the bill will generate revenue in the form of application fees and license fees. Application fees are \$150,000 per site and are renewable every five years. The LBAO is unable to determine how many facilities will apply for licenses, and so the aggregate revenue from these fees is indeterminable. License fees are established at a statutory minimum of \$5,000,000 each for four 600-machine facilities and \$10,000,000 each for two 1,300-machine facilities, and are also valid for five years. The bill states that 75 percent of the revenue generated will be deposited into the general fund, 15 percent will be used by the Gaming Oversight Authority as start-up capital at each location for training and an initial bank, and ten percent, which is collected in advance by the Authority and used for initial start-up costs, will be returned to the applicant. Therefore, assuming all six licenses are sold, license fees will generate the following revenue for the general fund each five-year period:

General Fund Revenue Per Five-Year Period

License	Fee	Number of applications / licenses	General fund revenue (75% of application fee)
License for 600- machine facility	\$5,000,000	4	\$15,000,000
License for 1,300- machine facility	\$10,000,000	2	\$15,000,000

Total: \$30,000,000