The Defeat of Senate Joint Resolution 27: Is there a Lottery in Florida's Future?

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COMMENT BY
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I. INTRODUCTION

Once again the Florida Legislature has defeated a proposal which would have allowed Florida's voters to decide whether the state should operate a lottery. This latest proposal marks the sixth year that lottery legislation has been introduced and defeated since 1975.1 Although twenty-two states and the District of Columbia have instituted lotteries, Florida has not done so.2 The defeat of this latest lottery proposal comes at a time when statewide polls indicate that a majority of Floridians favor a lottery in their state.3

Four lottery bills were introduced during the 1985 Regular Session: Senate Joint Resolution 27, House Joint Resolution 2, House Joint Resolution 67, and House Joint Resolution 172. Of these, only Senate Joint Resolution 27, sponsored by Senator Jack Gordon,4 was debated in committee. The three House joint resolutions died in committee, presumably because House Speaker James Harold Thompson5 and other conservative leaders opposed the legislation on moral grounds.6

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3. An article in the Miami Herald stated that "recent polls show that 75 percent or more Floridians support a lottery. A recent Herald poll of 760 Floridians indicated 21 percent oppose it." Miami Herald, Apr. 18, 1985, at 27A, col. 2. Similarly, a News-Press survey taken in Southwest Florida in November of 1984 indicated that 66% of those surveyed were in favor of a state lottery. Twenty-three percent were opposed and 10% were undecided. Fort Myers News-Press, Feb. 26, 1985, at 6A, col. 1.

4. Dem., Miami Beach.

5. Dem., Quincy.

6. See generally Miami Herald, Apr. 18, 1985 at 27a, col. 1; Tallahassee Democrat, Apr.
This Comment focuses on Senate Joint Resolution 27. Its early and unexpected demise signaled the end of all chances for any lottery legislation from the 1985 Regular Session. If Floridians are to vote on a constitutional amendment to allow the establishment of a lottery, the amendment must reach the ballot in another manner. This Comment traces the history of the lottery in the United States from its beginnings in the colonial period to the present. It outlines the operational and organizational aspects of the lottery as set forth in Senate Joint Resolution 27 and analyzes the proposed impact a lottery would have on state revenue in Florida. The Comment discusses the numerous arguments introduced during the debate of the lottery in the various committees and examines remaining possibilities for the establishment of a state lottery in view of the defeat of the legislative resolutions.

II. THE ORIGINS OF THE LOTTERY IN AMERICA

The lottery thrived in colonial America. Each of the original Thirteen Colonies instituted a lottery for raising revenue, the proceeds of which were generally used for government financing or for charitable or educational purposes. Revenue raised from these early lotteries benefitted, for example, many of our oldest universities, including Harvard, Yale, Columbia, and Princeton.

Because of the fraud inherent in early lottery operations, private lotteries were abolished in most of the Colonies by the mid-1700's and the era of government-licensed lotteries commenced. Governmental supervision diminished these earlier abuses and quelled opposition to the lottery. Not surprisingly, the use of the lottery grew. Colonial Americans preferred lotteries to additional taxes, and a persistent currency shortage created by an unfavorable bal-


7. Sen. Gordon, the sponsor of SJR 27, had expected the resolution to pass the Senate Comm. on Fin., Tax. & Claims by a margin of ten to nine. He blamed the resolution's defeat on heavy lobbying by the pari-mutuel industry. Orlando Sentinel, Apr. 18, 1985, at A1, col. 2.


The era of the government-sanctioned lotteries appeared to have passed. At the end of the Civil War, the lottery and a plethora of illegal moneymaking schemes emerged in the South and West. Whether due to the financial difficulties of the war or the influences of the carpetbaggers who occupied the South, at least three southern states, Kentucky, Mississippi, and Louisiana, reestablished lotteries. Congress responded by taking quick action to regulate these newly created lotteries. In 1868, Congress passed legislation which made it unlawful for anyone to transmit lottery materials through the mail. An amendment in 1872 limited the applicability of the 1868 law to illegal lotteries only. While these laws had little effect on the interstate transportation of lottery materials, they indicated

11. Id.
13. Id.
16. Id.
17. Id.
18. F. WILLIAMS, supra note 14, at 34.
that Congress was willing to exclude from the mails anything it believed injurious to the public morals under its constitutional right to establish post offices. In 1876, Congress amended the 1872 statute to eliminate the word "illegal," and thus prohibited the use of the mails for the transportation of any lottery material. This law, too, had little practical effect. Illegal lotteries continued to flourish for several more years, but by 1890 most had been eliminated through local, state, and federal law enforcement measures. By 1878, every state with the exception of Louisiana had prohibited lotteries.

The Louisiana State Lottery, the last lottery of the post-Civil War era, was created in 1865 by a New York gambling syndicate. Widespread abuses in Louisiana's lottery led to the current legal restraints imposed upon all state lotteries. The highly profitable Louisiana State Lottery affected almost every state of the Union, notwithstanding the antilottery laws of those states. Ninety-three percent of the Louisiana lottery's proceeds came from outside the state. National criticism of lotteries led Congress to pass legislation in 1890 which prohibited the use of the mails for distribution of lottery materials, including tickets and publications which contained advertisements or other information about lotteries. The Louisiana State Lottery was finally outlawed by the Louisiana Legislature in 1892. Although there were attempts to locate the lottery elsewhere, these failed. In 1895, Congress finally abolished all lotteries by prohibiting the introduction of lottery materials into interstate commerce. With the death of the Louisiana lottery, the last legal lottery of the nineteenth century came to an end. This prohibition was to continue for the next seventy years.

In recent years, state lawmakers confronted by economic problems coupled with opposition to increased taxes, have looked for alternative methods to augment revenues. The lottery has be-

22. Id.
24. Id.
25. Id.
30. D. Weinstein & L. Deitch, supra note 10, at 12. The lottery company attempted to circumvent this prohibition by relocating its headquarters to Honduras and Florida. Id.
come a popular means for meeting this task. In 1963, New Hampshire established the first state lottery of the twentieth century.\textsuperscript{32} New York quickly followed suit, establishing its own state lottery in 1967. Revenues generated by the New Hampshire and New York lotteries failed to meet the prelottery expectations of officials in those states.\textsuperscript{33}

In 1971, New Jersey authorized its own state lottery and developed a new lottery system that serves as the model for other states today. The New Jersey lottery combined inexpensive tickets and readily accessible playing locations with quicker and more efficient payoffs.\textsuperscript{34} Further, the New Jersey lottery returned forty-five percent of its revenues as prizes in comparison to New Hampshire, which returned only thirty-five percent, and New York, which returned only thirty percent. The New Jersey lottery was an overnight success.\textsuperscript{35}

By March of 1983, seventeen states and the District of Columbia had instituted lotteries. Based on one recent study conducted by a state government news survey, a majority of these states have been pleased with the performance of their lotteries.\textsuperscript{36} With Oregon and Iowa establishing new lotteries this year, and three new lotteries commencing in 1986,\textsuperscript{37} twenty-two states and the District of Columbia have now established or authorized the establishment of lotteries.

The State of Florida sanctioned the operation of lotteries from 1828 until 1868, at which time they were prohibited through constitutional\textsuperscript{38} and legislative action.\textsuperscript{39} These prohibitions remain in effect today. Article X, section 7 of the Florida Constitution states: "Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state."\textsuperscript{40} Senate Joint Resolution 27 would have amended Florida's Constitution to read:

\begin{footnotesize}
\begin{enumerate}
\item[32.] D. Weinstein & L. Deitch, supra note 10, at 11.
\item[33.] Id. at 16.
\item[34.] Dep't of Legal Affairs, supra note 2, at 3.
\item[35.] D. Weinstein & L. Deitch, supra note 10, at 16.
\item[38.] Fla. Const. art. IV, § 20 (1868); see also id. art. III, § 23 (1885).
\item[39.] Ch. 1637, ch. 10, §§ 1-6, 1868 Fla. Laws 61, 101-03.
\item[40.] Fla. Const. art. X, § 7.
\end{enumerate}
\end{footnotesize}
(a) Lotteries, other than state operated lotteries as provided in subsection (b) and the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state.

(b) By general law and subject to conditions specified therein, the state may establish and operate a state lottery, provided that nothing in this section shall be construed to authorize the establishment of casino gambling in this state. 41

Senate Joint Resolution 27 would also have provided for the addition of section 20 to Article XII of the Florida Constitution. This section, identified as the State Lotteries Act, would have enumerated the responsibilities of the lottery commission and its director and would have provided for the operation and organization of the state lottery. 42

III. ORGANIZATIONAL AND OPERATIONAL ASPECTS OF SENATE JOINT RESOLUTION 27

Of the twenty-two jurisdictions which presently allow lotteries, 43 a majority have created either a commission or a board to which has been delegated the authority to supervise the operational aspects of the lottery. 44 Commissions are usually composed of five members appointed by the Governor with the advice and consent of the legislature. 45 The commission members’ terms usually extend four years, 46 and the commission commonly elects one of its members to serve as chairman. It is the duty of the chairman to act as an intermediary between the commission and the director of the lottery. 47 Lotteries in those few states which have not created a commission or a board traditionally have been directed by administrators. 48

To ensure that any problems will be quickly disclosed and corrected, state legislatures commonly have included the requirement of a “constant reporting and monitoring process” in the enabling

42. Id. at 2 (proposed Fla. Const. art. XII, § 20(c)).
43. See supra note 2.
44. DEP’T OF LEGAL AFFAIRS, supra note 2, at 5.
45. L. MAXWELL, supra note 36, at 6.
46. Id.
47. Id.
48. Id. The lotteries in Delaware, Michigan, and New York are directed by administrators. See DEL. CODE ANN. tit. 29, § 4805 (1972); MICH. COMP. LAWS § 432.7 (1972); N.Y. TAX LAW § 1603 (McKinney 1985).
A survey by the Florida Attorney General concluded that "no state appears to have paid much attention to this legal requirement."\(^5^0\) A number of respondents to the survey replied that they believed any monitoring of the lottery to be the responsibility of the legislature even though the enabling legislation placed this duty upon the lottery commission.\(^5^1\)

Senate Joint Resolution 27 was similar in administrative design to lottery legislation enacted in a majority of the jurisdictions which currently operate lotteries. Had the resolution passed, it would have created a State Lotteries Commission within the Division of State Lotteries of the Department of Business Regulation.\(^5^2\) The proposed Commission would have consisted of five members appointed by the Governor and subject to confirmation by the Senate. Each member would have served four years\(^5^3\) and the Commission would have annually elected one of its members as chairman.\(^5^4\) The Governor would have been empowered to remove any member of the Commission for cause.\(^5^5\) Members would have been reimbursed for "reasonable expenses incurred in the performance of their official duties" but would have received no salary.\(^5^6\) The Governor would also have been responsible for appointing the Director of the Division of State Lotteries. The resolution would have required the Director to be "qualified by training and experi-

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49. DEP’T OF LEGAL AFFAIRS, supra note 34, at 8. Fla SJR 27 (1985) provides for such a monitoring process. See infra notes 62-64 and accompanying text.

50. DEP’T OF LEGAL AFFAIRS, supra note 2, at 9. The Florida Attorney General conducted a telephone survey of lottery officials from whom specific information was gathered concerning each existing state lottery. Connecticut appears to be the only state to have met its "continuous study" requirement. Id.

51. Id. Other respondents replied that "they didn’t know what had been done under the law" and one respondent answered that although a report may have been completed, he did not believe that it had been published. Id.

52. Fla. SJR 27 (1985) at 2 (proposed FLA. CONST. art. XII, § 20(c)(1)). Currently, the Florida pari-mutuel industry is regulated by the Department of Business Regulation. Under SJR 27, responsibility for regulating the lottery would also have rested with that department. Fla. S., Comm. on Fin., Tax. & Claims, tape recording of proceedings (Apr. 23, 1985) (on file with committee).

53. Fla. SJR 27 (1985) at 2 (proposed FLA. CONST. art. XII, § 20(c)(1)). Although each member would have been appointed for a term of four years, an exception was made for three of the five commission members originally appointed. While two of the five original members would have served four year terms, one member would have served only one year, one member would have served two years, and one member would have served three years. Id.

54. Id.

55. Id. (proposed FLA. CONST. art. XII, § 20(c)(3)).

56. Id. (proposed FLA. CONST. art. XII, § 20(c)(4)).
ence to direct the work of the division."

In addition, the Director would have been required to "devote his entire time and attention to the duties of his office" and would have been prohibited from being employed in any other capacity.

The proposed State Lotteries Act thoroughly outlined the powers and responsibilities of the Commission. Under the Act, the Commission would have been given the power,

[after full and thorough study, to adopt such rules, in accordance with the Administrative Procedure Act, governing the establishment and operation of a state lottery as it deems necessary and desirable in order that the lottery is initiated at the earliest feasible and practicable time, and in order that such lottery produces the maximum amount of net revenues.]

In addition, the proposed Act would have required that the rules adopted by the Commission provide for regular selection of winning tickets, the prohibition of any person under eighteen years of age from serving as a ticket vendor, and the "[a]pportionment of the total revenues accruing from the sale of tickets or shares."

Further, the Commission would have been required to make recommendations to the Director of the lottery regarding its operation and to report monthly and yearly to the Governor and the legislature regarding lottery revenues, prize disbursements, and expenses.

In the event the Commission believed that immediate changes were needed in order to "prevent abuses and evasions of the proposed State Lotteries Act," it would have been empowered to report immediately to the Governor as part of the continuous monitoring program provided in the proposed article XII, section 20(e). The Commission would also have had the power to carry on a continuous investigation of the lottery within the state. The goals of such investigations would have been fourfold: (1) to discover any abuses, evasions, or defects in the Act itself; (2) to dis-
cover any criminal activities being generated by the lottery; (3) to suggest recommendations for changes in the Act and the rules adopted to prevent such abuses from occurring; and (4) to ensure that the State Lotteries Act and any adopted rules were administered properly.64

Similarly, the Joint Resolution thoroughly outlined the powers and responsibilities of the Director.65 The Director would have supervised the lottery's operation66 and appointed the personnel necessary to ensure that the lottery functioned properly.67 Further, the Director would have been empowered to license lottery ticket vendors "who would best serve the public convenience and promote the sale of tickets or shares."68 In accordance with the proposed State Lotteries Act and any rules adopted by the Commission, the Director would have had authority to suspend or revoke the license of any agent who violated any part of the Act or rule of the Commission.69 The Director would also have been required to meet "not less than once each month with the commission on the operation and administration of the lottery,"70 and to certify to the State Comptroller a monthly statement detailing lottery profits, prize disbursements, and expenses.71 The Director would have had the right to make any recommendations for the adoption, amendment, or repeal of any rules he believed necessary.72

The proposed State Lotteries Act would also have vested exclusive power in the Director to select lottery sales agents.73 The Act enumerated the criteria to be used by the Director in deciding whether a license should be granted. Among those criteria were the financial responsibility and security of the person and his business,74 the accessibility of the business to the public,75 and the volume of expected sales.76 A Director would have been unauthorized

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64. Id. (proposed Fla. Const. art. XII, § 20(e)(5)(a)-(d)).
65. Id. at 5-6 (proposed Fla. Const. art. XII, § 20(f)).
66. Id. at 5 (proposed Fla. Const. art. XII, § 20(f)(1)).
67. Id. (proposed Fla. Const. art. XII, § 20(f)(2)-(3)).
68. Id. (proposed Fla. Const. art. XII, § 20(f)(5)).
69. Id. at 6 (proposed Fla. Const. art. XII, § 20(f)(7)). SJR 27 would have allowed the lottery director to impose a monetary penalty in lieu of suspending or revoking any license.
Id.
70. Id. at 5-6 (proposed Fla. Const. art. XII, § 20(f)(6)).
71. Id. at 6 (proposed Fla. Const. art. XII, § 20(f)(9)).
72. Id. (proposed Fla. Const. art. XII, § 20(f)(10)).
73. Id. at 7 (proposed Fla. Const. art. XII, § 20(h)(1)).
74. Id. (proposed Fla. Const. art. XII, § 20(h)(1)(a)).
75. Id. (proposed Fla. Const. art. XII, § 20(h)(1)(b)).
76. Id. (proposed Fla. Const. art. XII, § 20(h)(1)(d)).
to grant a license to anyone found guilty of a felony or of "any crime involving moral turpitude," to anyone found guilty of violating any gambling laws or of fraud or misrepresentation, or to anyone who had engaged in gambling as a "significant source of income." The Act listed similar criteria to be considered by the Director in deciding whether a license should be granted to a corporation.

IV. LEGISLATIVE HISTORY

On December 5, 1984, Senate Joint Resolution 27 was referred to the Commerce Committee, the Finance, Taxation and Claims Committee, and the Rules and Calendar Committee. On March 5, 1985, the Commerce Committee debated the resolution and passed it with one amendment. On April 23, the Finance, Taxation and Claims Committee debated the resolution and a number of amendments were introduced. After full debate, the Committee laid the resolution on the table. Thus, Senator Gordon's attempt to get the resolution to the Senate floor failed and Florida's citizens were again denied the opportunity to decide whether Florida should operate a lottery.

V. COMMITTEE DEBATE

The issues debated in the Commerce Committee and the Finance, Taxation and Claims Committee were virtually identical. The sometimes bitter debate centered on five basic issues: the amount of revenue that could be raised from a lottery; the effect of a state lottery upon the pari-mutuel industry; the possibility of a regressive economic impact of a lottery upon low-income families; problems associated with the earmarking of funds for education; and the moral issue of state involvement in the gambling

77. Id. (proposed Fla. Const. art. XII, § 20(h)(2)(a)).
78. Id. (proposed Fla. Const. art. XII, § 20(h)(2)(c)).
79. Id. at 8 (proposed Fla. Const. art. XII, § 20(h)(2)(d)).
80. Id. at 7 (proposed Fla. Const. art. XII, § 20(h)(2)(c)).
81. Id. at 8 (proposed Fla. Const. art. XII, § 20(h)(3)).
82. Fla. Legis., History of Legislation, 1985 Regular Session, History of Senate Bills at 8, SJR 27 [hereinafter cited as History of Senate Bills].
83. Id.
84. Id.
85. Although a motion to reconsider was made, Fla. SJR 27 was effectively killed once it was laid on the table by the Comm. on Fin., Tax. & Claims. Fla. S. Jour. 168 (Reg. Sess. Apr. 24, 1985).
business. Lottery advocates were led in both committees by Senator Gordon, sponsor of Senate Joint Resolution 27, and by Commissioner of Education Ralph Turlington. Lottery opponents were led in the Commerce Committee by Attorney General Jim Smith, and in both the Commerce Committee and the Finance, Taxation and Claims Committee by Robert Flora, a lobbyist for the American Greyhound Track Owners Association.

Senate Joint Resolution 27 contained provisions relating to the distribution of lottery revenues. Forty-five percent of any lottery revenue would have been distributed to winning ticket-holders, fifteen percent placed in an operating fund, and the remaining forty percent placed into the state's general revenue fund. However, the total amount of revenue that could be raised through a statewide lottery was the center of much committee debate. After studying per capita sales in each state that had an active lottery in 1983, the Department of Business Regulation estimated that Florida could have generated lottery sales of approximately $526.1 million for the 1982-83 fiscal year. After adjusting its figures to account for the increase in population for the 1985-86 fiscal year, the Department concluded that Florida could achieve annual lottery sales of $616.3 million. This figure did not take into account Florida's "substantial tourist population." Conservative estimates have predicted that a statewide lottery could yield an annual profit to the state of more than $260 million.

During debate in the Finance, Taxation and Claims Committee, Senator Don Childers expressed doubt whether actual lottery sales could reach $600 million. He arrived at this conclusion after examining the staff analysis of the Senate Finance, Taxation, and Claims Committee which showed that Ohio and Illinois, two states

87. Comm'r of Educ. and Member of the Bd. of Regents.
88. Fla. SJR 27 (1985) at 11-12 (proposed Fla. Const. art. XII, § 20(p)).
89. Staff Analysis, supra note 60, at 4.
90. Id.
91. Id.
92. There is a wide disparity in lottery income projections. The Miami Herald noted a recent House study which projected income of $220 million per year. State Rep. Art Simon, Dem., Kendall, believes annual profits of $267 million are possible. The figure most commonly cited by Sen. Gordon and other legislators is $300 million. People Want Lottery; Legislature Doesn't, Miami Herald, Feb. 21, 1985, at 12A, col. 2.
93. Dem., West Palm Beach.
similar in size to Florida, experienced only $399 and $495 million in annual lottery ticket sales, respectively. In response, Senator Gordon noted that those figures represented only 1983 sales and did not take into account the rise in population in Florida, the yearly rise in inflation, or the additional sales attributable to the tourist industry.\textsuperscript{94}

Mr. Flora called the lottery "the most expensive tax burden [the legislature] has ever considered placing on the citizens and tourists of the State of Florida."\textsuperscript{95} He noted that while most taxes have an administrative collection cost of one to two percent of the revenue they generate, lotteries have administrative costs of about ten to twenty percent.\textsuperscript{96} But a report from the office of Representative Thomas H. Armstrong\textsuperscript{97} stated that "[p]robably the greatest misconception of lotteries is that the revenue produced from lotteries goes primarily to administrative and other operational costs."\textsuperscript{98} The report concluded, however, that an investment of five cents is needed to collect forty cents for every lottery dollar, an administrative cost of eleven percent.\textsuperscript{99}

In March of 1982, the Department of Business Regulation undertook a study to determine whether a lottery would have a substantial impact on the pari-mutuel industry. The study concluded that any impact would be minimal.\textsuperscript{100} Statistics included in the Senate staff analysis lend support to this conclusion. The statistics included the total pari-mutuel "handle" of all sixteen states which conduct both lotteries and pari-mutuels.\textsuperscript{101} A comparison of the total amount of pari-mutuel spending generated for the year in which the lottery began in each state with the total amount spent on pari-mutuel wagering in that state in 1983 indicates that the presence of lotteries has had little effect on pari-mutuel revenues.\textsuperscript{102}

\textsuperscript{94} Fla. S., Comm. on Fin., Tax. & Claims, tape recording of proceedings (Apr. 23, 1985) (on file with committee).
\textsuperscript{95} Id.
\textsuperscript{96} Id.
\textsuperscript{97} Dem., Plantation.
\textsuperscript{98} L. Maxwell, supra note 36, at 22.
\textsuperscript{99} Id. at 24.
\textsuperscript{100} Staff Analysis, supra note 60, at 3.
\textsuperscript{101} Id. The pari-mutuel "handle" refers to the total gross receipts of the respective states from their pari-mutuel industry.
\textsuperscript{102} Statistics cited in Staff Analysis, supra note 60, at 3, showed that in New Jersey, for example, the total pari-mutuel handle had increased by approximately 175% in the years following the institution of its lottery. Similarly, Massachusetts reported an increase of approximately 90%. Conversely, Delaware and New Hampshire reported declines in their pari-
However, some disagree with the conclusion that a lottery would have a minimal impact on the pari-mutuel industry.\(^{103}\) For example, Attorney General Smith, who conducted his own study on the feasibility of a state lottery, reported that although the issue had not been addressed in his study, he personally believed that a lottery would be detrimental to the state's pari-mutuel industry.\(^{104}\) Senator Gordon responded that because only a small percentage of Floridians attend pari-mutuel facilities, the industry would not be greatly affected.\(^{105}\)

Senator Richard H. Langley\(^{106}\) disagreed with Senator Gordon and noted that the Senate staff analysis clearly demonstrated that five of the fourteen states experienced declines in total pari-mutuel revenues once lotteries were established. Delaware's pari-mutuel handle, for example, declined by fifty-eight percent.\(^{107}\) Senator Langley made two additional observations. He noted that the study's statistics did not take into account the yearly rise in inflation and that no other state has as many pari-mutuels as Florida.\(^{108}\)

Mr. Flora observed that the pari-mutuel industry provides Florida with over $100 million per year in revenue.\(^{109}\) He also noted that the pari-mutuel industry has an estimated $2 billion effect on the economy of Florida in terms of jobs, taxes, and purchases of goods and services. He argued that any competition generated by a statewide lottery would be detrimental to the pari-mutuel industry.\(^{110}\) This conclusion, however, is not universally agreed with. One study, for example, recognized the anxiety felt by the pari-mutuel industry but stated that "these concerns are not borne out by the facts."\(^{111}\) This opinion was reached through analysis of data

\(^{103}\) Although the effect that a lottery would have on the pari-mutuel industry was heavily debated in the Senate Comm. on Com., this issue was not extensively debated in the Senate Comm. on Fin., Tax. & Claims. See generally, Fla. S. Comm. on Com., tape recording of proceedings (Mar. 5, 1985) (on file with committee); Fla. S. Comm. on Fin., Tax. & Claims, tape recording of proceedings (Apr. 23, 1985) (on file with committee).

\(^{104}\) Fla. S., Comm. on Com., tape recording of proceedings (Mar. 5, 1985) (on file with committee).

\(^{105}\) Id.

\(^{106}\) Id.

\(^{107}\) Staff Analysis, supra note 60, at 3.

\(^{108}\) Id.

\(^{109}\) Id.

\(^{110}\) Id.

\(^{111}\) L. MAXWELL, supra note 36, at 27 (emphasis omitted).
collected by the House Finance and Taxation Committee.112 Interestingly, this study, which was conducted for the benefit of the Florida Legislature, was never mentioned during debate in either committee.113

Another concern of opponents of a Florida lottery was its potential operation as a regressive tax upon the poor. A regressive tax is one which results in lower income groups paying proportionally more of their incomes as tax, while higher income groups pay proportionally less. However, any tax which rests on general consumption can be considered regressive simply because members of lower income groups will always spend a higher percentage of their incomes on general consumption items than will members of higher income groups.

Studies undertaken to determine whether lotteries operate as a regressive tax upon low-income groups have presented mixed findings. One Delaware study found that members of low-income groups played the lottery in higher numbers than did those of high-income groups. The study attributed this result to the fact that many lottery terminals were located in low-income neighborhoods.114 Also, the United States Commission for Review of the National Policy Toward Gambling reported that it found evidence indicating that lotteries are more popular among members of lower income groups than are other types of gambling.115

Lottery proponents, however, are quick to dispute the contention that lotteries operate as a regressive tax. One commentator has noted that the average income levels for lottery players by state are as follows: Arizona, $27,000; Maryland, $15,000 to $21,000; Michigan, $18,000; New York, $25,000 to $35,000; Ohio, $10,000 to $30,000; Vermont, $17,000; and Washington State, $25,000 to $35,000.116 Further, a 1982 study found that "low income groups do not participate in the lottery in greater proportion to their num-

112. Id. (citing Staff of Fla. H.R. Comm. on Fin. & Tax., Interactive Effects Between the Lottery and the Pari-Mutuel Industry in Selected States (1982) (on file with committee).
114. Dep't of Legal Affairs, supra note 2, at 15, 16.
116. Knapp, Lotteries Raise Cash for States, State Government News 7 (June, 1983), noted in Dep't. of Legal Affairs, supra note 2, at 16.
It concluded that "the assertion that the poor disproportionately buy state lottery tickets is only a myth." It

The issue of earmarking lottery revenue for education was hotly debated in both the Commerce Committee and in the Finance, Taxation and Claims Committee. Opponents and proponents alike agreed that there was no guarantee that revenue generated from a lottery would be used for education. In its original form, the resolution only stipulated that lottery revenue would be placed in the General Revenue Fund. This problem led Senator Mattox S. Hair of the Commerce Committee to propose an amendment to Senate Joint Resolution 27 which mandated that lottery revenue would not be placed in the General Revenue Fund, but rather would be "distributed proportionately among the Division of Public Schools, Division of Community Colleges, and the State University System based on distributions of the previous year from the General Revenue Fund." This amendment, the only amendment proposed in the Commerce Committee, was adopted.

Commissioner Turlington, a supporter of the lottery, was questioned about the possibility that if lottery revenues were earmarked for education, the legislature might in the future appropriate less money for education. He responded that there were no guarantees that any lottery revenue designated for education would so be used or that the legislature would not in fact appropriate less money for education in the future. He noted that the lottery was only a revenue-raising device and that with the extra money the legislature could start "making a difference in education," something that it was not presently doing. Senator Langley remarked that he believed this amendment would be useless, although it would serve as "an expression of the intent of the committee." Other senators felt that the education amendment was unnecessary and could possibly jeopardize the resolution, with one senator noting that "public policy" would mandate the use of lot-

118. Id.
119. Fla. SJR 27 (1985) at 12 (proposed FLA. CONST. art. XII, § 20(p)(3)).
120. Dem., Jacksonville.
121. Staff Analysis, supra note 60, at 6.
122. Id.
123. Id.
125. Id.
tery revenue for education in any case. The majority of the Committee's members, however, disagreed; Senate Joint Resolution 27 was amended in the Commerce Committee to provide that all funds from any lottery would go to public education in Florida.

Of the many issues surrounding the establishment of a statewide lottery, the moral issue associated with the undertaking probably defeated the resolution. Senator Don Childers of the Finance, Taxation and Claims Committee expressed his belief that the state should not be saying to young people that it is in the gambling business. Many other antilottery senators also questioned whether it was the function of state government to get involved in this business, and Attorney General Jim Smith noted that "Florida has a strong national image as a strong family state and a lottery would tarnish that." He believed that the next step would be casino gambling in Florida.

Lottery proponents countered with arguments of their own. During debate in the Commerce Committee, Tom Abrams, the executive director of the Florida Student Association, stated that "the lottery is much more moralistic than betting on people and dogs [as Florida already allows]." Senator James A. Scott further observed:

What we are doing here is allowing the people of Florida to vote on this issue. I frankly think that the people should be able to decide their own morals. If they don't want to bet on the lottery, . . . track, . . . or jai-alai, then they don't have to go and they don't have to bet. . . . All legislators better pay attention to the fact that where the people have this much interest in something, you really have a responsibility to give them a chance [to vote]. They send us up here to manage the state and to make decisions but where their wishes are clearly known then we have an obligation to at least let them vote on it.

126. Id.
127. Staff Analysis, supra note 60, at 1.
129. Id.
130. Id.
131. Id.
133. Repub., Ft. Lauderdale.
Similar observations failed to persuade a majority of senators in the Finance, Taxation and Claims Committee and Senate Joint Resolution 27 was laid on the table.135

V. REMAINING POSSIBILITIES FOR A LOTTERY

Although the Florida Legislature has again declined to offer Floridians an opportunity to vote on a lottery, chances for a statewide lottery do exist. Article XI, sections 1-4 of the Florida Constitution specifically enumerate the procedures necessary for amending the constitution.136 Section 1 empowers the legislature, by joint resolution passed by a three-fifths vote of each house, to propose the amendment of a section or the revision of one or more articles of the constitution.137 Senate Joint Resolution 27 was an unsuccessful attempt at this type of proposal. Section 2 authorizes the establishment of a revision commission to periodically assemble and present to the electorate a revision of the constitution.138 Section 4 authorizes the establishment of a constitutional convention empowered to present a revision of the constitution to the electorate.139 Finally, section 3 authorizes amendments and revisions of the constitution through an initiative process.140 Article XI, section 3 provides:

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the secretary of state a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.141

With the defeat of Senate Joint Resolution 27, two citizens’ groups in Florida began efforts to place the lottery proposal on the No-

135. History of Senate Bills, supra note 82, at 8, SJR 27.
137. Id. § 1.
138. Id. § 2.
139. Id. § 4.
140. Id. § 3.
141. Id.
November 1986 ballot through the initiative process. One group, the Committee for Florida State Lotteries, claimed to have collected 250,000 of the 342,939 signatures necessary to place the proposal on the ballot when it unexpectedly withdrew its petition. The second group, Excellence Campaign: An Education Lottery (EXCEL), is being led by Commissioner Turlington. Although EXCEL has only recently begun collecting signatures, the group expects little difficulty meeting that constitutional requirement.

EXCEL recognizes, however, that a more difficult obstacle is the requirement of article XI, section 3 that “any such revision or amendment shall embrace but one subject and matter directly connected therewith.” This requirement has become commonly known as the “one subject rule.” Many supporters of citizens’ initiatives have argued that two recent Florida Supreme Court decisions, Fine v. Firestone, and Evans v. Firestone, will make it impossible for citizens to propose an amendment that will fit under the court’s narrow one subject rule.

In Fine, the Florida Supreme Court removed from the November 1984 ballot a tax-limiting measure known as Amendment One. The court found the proposal to embrace at least three subjects and that it therefore violated article XI, section 3. The court noted that the one subject test was a functional rather than a locational test. “[T]he test should include a determination of whether the proposal affects a function of government as opposed to whether the proposal affects a section of the constitution.” The court further noted that an appropriate factor to be considered in determining whether an initiative proposal violates the one subject rule is the manner in which the proposal affects other articles or sections.

Similarly, in Evans, the Florida Supreme Court removed from the November 1984 ballot a medical malpractice reform measure known as Amendment Nine because the court found that it vio-

143. Fla. Const. art XI, § 3.
144. 448 So. 2d 984 (Fla. 1984).
145. 457 So. 2d 1351 (Fla. 1984).
147. 448 So. 2d at 986.
148. Id. at 990 (citing Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978)).
149. Id.
lated the one subject rule. Noting that the test in Fine was functional rather than locational, the court concluded that the proposed amendment violated article XI, section 3. As the Fine and Evans decisions demonstrate, any initiative must be carefully worded in order to pass the scrutiny of the Florida Supreme Court. As noted by Justice McDonald, "[t]he most restrictive and most difficult method of amendment to the constitution is the initiative process."

Commissioner Turlington and EXCEL believe they should be able to succeed where others have failed. Their petition provides for the establishment of a state lottery, the proceeds of which would be deposited in a trust fund to benefit Florida's public educational system. Further, the amendment includes a severance clause which provides that should any subsections of the amendment be held to violate the one subject rule, the amendment would be limited to creating a lottery only.

The EXCEL lottery initiative does not appear to violate the one subject rule. EXCEL has already asked Talbot D'Alember.te, Dean of the Florida State University College of Law, to review the petition. Dean D'Alember.te has expressed his belief that the petition would not be held violative of Article XI, section 3.

VI. CONCLUSION

With the defeat of Senate Joint Resolution 27, the Legislature has again declined to present to the electorate an opportunity to vote on whether a lottery should be established in Florida. This is
so even in the face of polls which indicate that a majority of voters would favor the use of a lottery as a revenue-raising measure. If Floridians are to vote on a lottery amendment in 1986, the proposal must reach the ballot through a citizens' initiative as provided in article XI, section 3 of the Florida Constitution. If the establishment of a statewide lottery is indeed consistent with the moral orientation of the citizens of Florida, it is difficult to understand the defeat of Senate Joint Resolution 27. If the lottery is as immoral as antilottery legislators have suggested, perhaps Florida should prohibit pari-mutuel gambling as well. No legislator, however, has come forward with such a suggestion.

It has not been conclusively determined whether a lottery would operate as a regressive tax. The studies undertaken to determine the regressive nature of lotteries have shown mixed findings. A regressive tax is politically anathema to legislators, but this should not prevent the citizens of the state from determining the issue for themselves. Further, the effect of a lottery on the lucrative pari-mutuel industry is not agreed upon. Nevertheless, the prospect of raising between $220 million and $300 million a year in new revenue for the state makes the lottery an appealing alternative.

Given the vast revenue potential of a lottery, its organizational and operational aspects must be carefully structured to ensure that the powers and responsibilities of the various lottery administrators are well delineated. Moreover, to ensure that any problems are quickly disclosed and corrected, the legislation must provide for a constant reporting and monitoring process. It is imperative that this requirement be observed in order for the lottery to run smoothly and efficiently. Senate Joint Resolution 27, with its specifically designated responsibilities and its constant monitoring requirement should serve as a model, if, and when, a state lottery is ultimately established in Florida.

Perhaps the most important issue associated with the lottery is the spending policy that is to govern the distribution of lottery revenues. Commissioner Turlington and EXCEL believe that any lottery revenue should be used to improve Florida's educational system.

At a time when a majority of Floridians support a statewide lottery, Senator Gordon and other lottery supporters should be lauded for their attempt to place the lottery proposal on the ballot. While Commissioner Turlington has suggested that with a state lottery "we have within our grasp the opportunity to become a
state of educational distinction,"155 the issue concerns more than education. If a lottery is instituted in Florida, the spending decisions may become as controversial as the establishment of the lottery itself.

155. See supra note 153.