

1 SB453  
2 168764-1  
3 By Senator Marsh (Constitutional Amendment)  
4 RFD: Tourism and Marketing  
5 First Read: 05-MAY-15

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8 SYNOPSIS: Under existing law, lotteries and gift  
9 enterprises are prohibited by Section 65 of the  
10 Constitution of Alabama of 1901.

11 This bill proposes an amendment to Section  
12 65 of the Constitution of Alabama of 1901 to  
13 establish an Alabama Lottery and the Alabama  
14 Lottery Corporation; to authorize and regulate  
15 gaming by the entities currently licensed to  
16 conduct pari-mutuel wagering at the four existing  
17 racetracks in Alabama where pari-mutuel wagering is  
18 currently legal; to levy a state gross receipts tax  
19 and a local gross receipts tax on gaming revenue of  
20 the racetracks; to levy a tax on vendors of gaming  
21 equipment; to provide for the disposition of  
22 lottery proceeds and state gaming tax proceeds; to  
23 create the Alabama Lottery and Gaming Commission to  
24 implement, regulate, and administer gaming and  
25 regulate and supervise the Alabama Lottery and  
26 Alabama Lottery Corporation; to authorize the  
27 Governor to negotiate a compact for gaming with the

1 Poarch Band of Creek Indians; and to require the  
2 Legislature to pass general laws to implement the  
3 amendment.  
4

5 A BILL  
6 TO BE ENTITLED  
7 AN ACT  
8

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

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. The following amendment to the  
27 Constitution of Alabama of 1901, as amended, is proposed and

1 shall become valid as a part thereof when approved by a  
2 majority of the qualified electors voting thereon and in  
3 accordance with Sections 284, 285, and 287 of the Constitution  
4 of Alabama of 1901, as amended:

5 PROPOSED AMENDMENT

6 "Section 65.

7 "Part I.

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

17 "Part II.

18 "Section 1. Declarations. The Legislature finds that  
19 lotteries have been enacted in many states and the revenues  
20 generated from those lotteries have contributed to the benefit  
21 of those states. Many Alabamians already participate in other  
22 state lotteries and visit casinos in neighboring states. The  
23 majority of Alabamians support the establishment of a lottery  
24 and support the limitation, regulation, and taxation of gaming  
25 in Alabama. Therefore, the purpose of the proposed amendment  
26 is fourfold: (1) to establish and provide for a fair and  
27 honest lottery to generate revenue for the state; (2) to limit

1 and regulate gaming by the existing racetracks for which  
2 gaming is already legal in Alabama; (3) to levy taxes on  
3 gaming at those racetracks to generate revenues for the  
4 benefit of the State General Fund; and (4) to authorize the  
5 Governor to negotiate a compact for gaming with the Poarch  
6 Band of Creek Indians.

7 "Section 2. Establishment of an Alabama Lottery.

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

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

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

1           "Part III.

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

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

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

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

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

1 the purpose of determining any tax levied on pari-mutuel  
2 wagering or for any other purpose.

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

11 "Section 2. Limitation on Gaming in Alabama.

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

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

19 "(1) Any otherwise applicable provisions of Article  
20 8 (commencing with Section 8-1-150) of Chapter 1 of Title 8 of  
21 or Article 2 (commencing with Section 13A-12-20) of Chapter 12  
22 of Title 13A of the Code of Alabama 1975.

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

25 "(3) Any judicial order, decision, or opinion issued  
26 prior to the operative date of this amendment that would  
27 otherwise have the effect of prohibiting, limiting, or

1 impairing the conduct of covered games. No provision of this  
2 amendment may be construed to allow a person to operate or  
3 conduct covered games except as permitted pursuant to this  
4 amendment.

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

10 "Section 3. Compliance with Federal Law.

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

25 "Section 4. State Gross Receipts Tax and Use of the  
26 Proceeds Thereof; Local Gross Receipts Tax.

1           "(a) (1) A state gross receipts tax of 13 percent is  
2 levied on the gaming gross revenue of each racetrack. To the  
3 extent a racetrack owns and does not lease covered games  
4 equipment that produces gaming gross revenue, an additional  
5 state gross receipts tax of one percent of the gaming gross  
6 revenue from the owned covered games equipment is levied on  
7 the equipment.

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

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

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

24           "(5) The local gross receipts tax on gaming gross  
25 revenue of a racetrack operating in a Class 1 or Class 2  
26 municipality for each calendar month shall be paid to the  
27 Class 1 or Class 2 municipality on or before the twentieth day

1 of the next succeeding calendar month. The municipality shall  
2 retain one-half of the revenue, shall pay one-quarter of the  
3 revenue to the county in which the municipality is principally  
4 located, and shall apportion the remaining one-quarter of the  
5 revenue to the municipalities in the county other than the  
6 Class 1 or Class 2 municipality on the basis of the ratio of  
7 the population of the municipality to the population of all  
8 municipalities in the county other than the Class 1 or Class 2  
9 municipality.

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

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

19 "(8) The state gross receipts tax on gaming gross  
20 revenue, the local gross receipts tax on gaming gross revenue,  
21 and the state covered game vendor tax shall be in lieu of all  
22 other state or local taxes or license fees levied with respect  
23 to the conduct of covered games by a racetrack.

24 Notwithstanding the foregoing, a racetrack is liable for all  
25 income taxes, franchise taxes, property taxes, lodging taxes,  
26 and sales and use taxes on merchandise, food, and beverage

1 generally applicable at uniform rates to all businesses  
2 operating in the county in which the racetrack is licensed.

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

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

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

16 "(b) The Alabama Lottery and Gaming Commission shall  
17 consist of five members. One member of the commission shall be  
18 appointed by the Governor with the advice and consent of the  
19 Senate, one member shall be appointed by the Attorney General  
20 with the advice and consent of the Senate, one member shall be  
21 appointed by the Lieutenant Governor with the advice and  
22 consent of the Senate, one member shall be appointed by the  
23 Speaker of the House of Representatives with the advice and  
24 consent of the Senate, and one member shall be appointed by  
25 the President Pro Tempore of the Senate with the advice and  
26 consent of the Senate. The appointment of the initial members  
27 of the commission shall be made by those officials holding

1 office on the effective date of this amendment without the  
2 advice and consent of the Senate and shall be made within 60  
3 days of the effective date of this amendment. The members,  
4 where possible, shall represent the gender and racial  
5 diversity of the state. No more than two members may reside in  
6 the same congressional district.

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

15 "(2) Members shall serve a term of five years and  
16 may serve two complete terms and any portion of an initial  
17 term of less than five years or any portion of an unexpired  
18 term to which appointed. Any vacancy occurring on the  
19 commission shall be filled for the unexpired term by the  
20 appointing authority as described in this section. The initial  
21 term of office upon the effective date of this amendment shall  
22 be one year for the member appointed by the Lieutenant  
23 Governor, two years for the member appointed by the Governor,  
24 three years for the member appointed by the Attorney General,  
25 four years for the member appointed by the Speaker of the  
26 House of Representatives, and five years for the member  
27 appointed by the President Pro Tempore of the Senate. Each

1 member of the commission shall serve for the duration of his  
2 or her term and until his or her successor is duly appointed  
3 and confirmed by the Senate; provided, however, that if a  
4 successor is not appointed and confirmed within 120 days after  
5 the expiration of a member's term, a vacancy shall be deemed  
6 to exist.

7 "(c) The commission and its members and employees  
8 shall be subject to the Ethics Law, Section 36-25-1, et seq.,  
9 Code of Alabama 1975; the Open Records Act, Section 36-12-40,  
10 Code of Alabama 1975; the Open Meetings Act, Section 36-25A-1  
11 et seq., Code of Alabama 1975; and the Administrative  
12 Procedure Act, Section 41-22-1, et seq., Code of Alabama 1975.

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

26 "(e) The commission shall regulate and supervise the  
27 conduct and operation of the Alabama Lottery and the Alabama

1 Lottery Corporation. In addition to the powers granted in  
2 subsection (d), additional powers, procedures, and operations  
3 of the commission with respect to regulation and supervision  
4 of the Alabama Lottery and the Alabama Lottery Corporation  
5 shall be enumerated in one or more general laws enacted by the  
6 Legislature subsequent to and supplemental to this amendment  
7 to further its purposes and provide for its implementation.

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

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

23 "(2) Until such time as the commission is fully  
24 established, a local racing commission having jurisdiction of  
25 a racetrack, in addition to the powers that it has under  
26 existing law, shall have the same power to supervise the  
27 conduct of covered games as it has to regulate and supervise

1 racinq activities and pari-mutuel wagering thereon, with such  
2 modification of such powers, not inconsistent with this  
3 amendment, as is necessary or appropriate to adapt them to the  
4 purposes of supervising the operation of covered games.

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

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

23 "(5) The number of covered games in operation by a  
24 racetrack and the percentage payout to a patron may not be  
25 restricted or limited by any general or local law, a local  
26 racing commission, or the commission.

1           "(6) A racetrack may not operate covered games  
2 without remitting to the state the applicable state gross  
3 receipts tax on gaming gross revenue.

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

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

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

21           "(B) A candidate for the Legislature.

22           "(f) The commission shall license, regulate, and  
23 supervise the conduct and operation of charitable bingo games  
24 pursuant to and in accordance with any validly enacted  
25 constitutional amendment authorizing such activity; provided,  
26 however, that bingo games operated pursuant to any validly  
27 enacted constitutional amendment shall be limited to being

1 played on paper sheets or paper cards. Any provision in any  
2 local constitutional amendment authorizing the conduct and  
3 operation of charitable bingo games to the contrary is hereby  
4 amended to conform to this provision. The powers, procedures,  
5 and operations of the commission with respect to the  
6 licensing, regulation, and supervision of charitable bingo  
7 games shall be enumerated in one or more general laws enacted  
8 by the Legislature subsequent to and supplemental to this  
9 amendment to further its purposes and provide for its  
10 implementation.

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

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

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

26 "Section 6. Special Session for Enabling  
27 Legislation.

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

10           "Section 7. Compact Negotiations.

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

18           END OF PROPOSED AMENDMENT

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

25           Section 3. The appropriate election official shall  
26 assign a ballot number for the proposed constitutional  
27 amendment on the election ballot and shall set forth the

1 following description of the substance or subject matter of  
2 the proposed constitutional amendment:

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

17 "Proposed by Act \_\_\_\_\_."

18 This description shall be followed by the following  
19 language:

20 "Yes ( ) No ( )."