

Game-Changer

New Types of Video Lottery Games
to Increase Education Funding During Tough Fiscal Times

Senator Jeffrey D. Klein
Deputy Majority Leader
34th Senate District
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Dear Reader:

Many New Yorkers are experiencing the most difficult economic challenges of their lifetimes resulting from a major economic downturn caused by the mortgage and Wall Street crises. Many families have lost significant savings from declining stock investments while others are facing the loss of their homes. Unemployment is on the rise, particularly in the financial industry where major banks have dissolved altogether or seen their value diminish dramatically.

State government is in equally dire straits. The declining economy has resulted in lower tax revenues, creating a gaping \$15 billion dollar projected deficit in the 2009-10 fiscal year, and a projected \$47 billion dollar deficit over the next four fiscal years. With deep cuts to important programs inevitable, we must explore all options at our disposal to produce more revenues to prevent even more dramatic reductions to education, health care, and other services.

The state Lottery, and other forms of gaming, has been an important source of income for schools across the state for decades. Since the Lottery's inception, over \$34 billion in funds from the Lottery have enhanced the education of New York's children. Last fiscal year, 13% of all state education funding for local education came from Lottery proceeds.

To ensure that cuts to education don't become severe, I'm proposing that we support the State Lottery's initiative to offer new types of games at video lottery facilities located at race tracks in the state that will generate new interest and excitement in gaming while producing additional monies for education. These new games, such as roulette, "twenty one", and baccarat, will resemble casino table games, while maintaining features that make them part of the state lottery, and therefore, constitutionally permissible. Projections are that these new games will produce nearly \$150 million every year for education. In 2010, when two new video lottery facilities (Aqueduct and Concord) are scheduled to open, projected revenues from the new video lottery games will rise to \$250 million annually for the state's schools. These funds will prove vital to supporting education during tough fiscal times.

Regards,

Jeffrey D. Klein
Deputy Majority Leader
New York State Senate
34th District



Index

Section 1: A Brief History of Gambling in New York State

Section 2: Video Lottery Facilities

Section 3: Senator Klein's Proposal for New Kinds of Video Lottery Games to Increase Education Funding



SECTION 1: A Brief History of Gambling in New York State



Gambling Has Existed in New York Since Colonial Times

- **Gambling has experienced periods of acceptance and regulation in New York since colonial times.**
- The first racetrack in America was built on Long Island in 1665.¹ All of the original 13 colonies had a form of lottery to raise revenue.²



Gambling and the NYS Constitutions

- In the early 1800s, gambling came under attack nationwide as part of larger social reform movements often rooted in religion. Lotteries were particularly targeted.³
 - Consequently, new lotteries were outlawed in New York **State's second Constitution adopted in 1821. Subsequent** constitutions in 1846 and 1894 restricted gambling further.⁴
 - **Article I, Section 9 of the 1894 Constitution stated, "nor shall any lottery or the sale of lottery tickets, pool-selling, book making, or any other kind of gambling hereafter be authorized or allowed within this state; and the Legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section."**
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Gaming Gains Greater Acceptance in the 20th Century

- **In the 20th Century, gambling was increasingly permitted in different forms.**
- The Constitution was amended in 1939 following the Constitutional Convention of 1938 to permit pari-mutuel betting on horse racing. ⁵
- The legalization of betting on horse racing paved the way for Off-Track Betting (OTB), which was established by state law in 1970. NYCOTB opened in 1971 with two branch offices and a telephone **betting center, becoming “the first legal off-track pari-mutuel wagering operation in the country.”** ⁶



Charitable Gaming & the Lottery is Made Legal

- In 1957, the constitution was amended to allow particular organizations (such as religious, charitable or non-profit organizations of veterans, volunteer firefighters) under government supervision and regulation to conduct bingo games ⁷ (in 1975, this was extended in the constitution to other games of chance). ⁸
- In 1966, a 3rd amendment to the constitution with regard to gambling permitted state lotteries. ⁹
- The first lottery tickets cost just 50 cents. ¹⁰ Today, numerous games are offered from scratch-off tickets to games like Lotto and Take 5 where randomly drawn numbers produce winning number combinations. ¹¹
- The state constitution requires that lottery proceeds fund education.
 - Last fiscal year, The Lottery contributed an annual record \$2.6 billion to education. During the 2007 school year, 13% of state aid to local districts and 5% of the total combined local, state and federal funding for local school districts in New York State was from the lottery. ¹²
 - Since the state Lottery was created, \$34.2 billion has been generated for education. ¹³



The Establishment of Indian Gaming

- The adoption of the Indian Gaming Regulatory Act (IGRA) of 1988 by the U.S. government laid the foundation for casino-style gaming in New York and other states across the country.¹⁴
 - IGRA enables Native American tribes recognized by the federal government to offer casino-style gaming (so-called Class III gaming one would experience at Las Vegas or Atlantic City) in states that permit any form of gambling if they enter into a compact with that state.¹⁵
 - Compacts between states and Native American tribes include **"specifications and standards for each game authorized, rules and internal controls governing the operation of the gaming facility, procedures for certification and/or registration of gaming employees and companies transacting business with the casino, and a system for mediating disputes."**¹⁶
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Indian Gaming Grows in New York

- Governor Mario Cuomo signed the first compact in New York under IGRA with the Oneida Indian Nation of New York. This led to the opening of the Turning Stone Casino Resort by the Oneidas in 1993.¹⁷
 - Other Native American tribes followed suit, with the Saint Regis Mohawk Tribe opening the Akwesasne Mohawk Casino in 1999 and the Seneca Nation of Indians starting the Niagara Casino in 2002, the Allegany Casino in 2004, and the Buffalo Creek Casino in 2007.¹⁸
 - These 3 tribes operate the only 5 casinos with class III/casino-style gaming in New York State. There are 7 total tribes that can potentially start casinos in New York State.¹⁹
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SECTION 2: Video Lottery Facilities



What is Video Lottery Gaming?

- A major development occurring in the NYS Lottery was the introduction of video lottery gaming. In 2001, the state legislature approved video lottery gaming.²⁰ In 2004, the state Court of Appeals upheld the law and video lottery operations began.²¹
- Video lottery machines resemble slot machines in appearance and in that they enable players to bet on the outcome of a video game. However, presently machines are connected to a centralized computer system that controls the operations of the games. While the result of each individual bet is random, the number of winners and payouts is programmed in advance.²² The connection to a centralized computer system that determines the aggregate outcome of bets is only one of many forms of gaming by video lottery machines and, therefore, constitutionally permissible.



Racinos are a Growing Revenue Source in NYS

- Currently, video lottery games are available at 8 race tracks in NYS. The pairing of video lottery games and horseracing at a **single location creates a "racino."** **Saratoga Gaming & Raceway** was the first racino, opening in 2004. ²³ In 2009, video lottery **facilities are being called "casinos" to more clearly identify** them as all-around entertainment venues.
- Over 13,000 video lottery machines are now in place at race tracks with 4,500 planned for Aqueduct, the new video lottery facility scheduled to open in Queens in 2010 and 3,500 planned for the Concord. ²⁴
- The video lottery program produced \$875 million in revenues in fiscal year 2007-08. After payouts to players, the proceeds go to education with a share of the revenues allocated to race track operators and for horse racing purses (see chart on the next slide). ²⁵



Video Lottery Revenues

Video Lottery Game Revenues at Racinos (2007-08 fiscal year)		
Racino	Net Machine Income*	Contributions to Education
Empire City Yonkers Raceway	\$431,710,797	\$253,026,478
Saratoga Gaming & Raceway	\$132,703,644	\$69,814,041
Finger Lakes Gaming & Raceway	\$96,139,592	\$49,453,984
Monticello Gaming & Raceway	\$62,388,067	\$31,565,676
Fairgrounds Gaming & Raceway	\$46,101,956	\$23,050,979
Tioga Downs	\$42,798,134	\$21,399,067
Vernon Downs	\$33,928,192	\$16,964,097
Batavia Downs Gaming	\$29,510,904	\$14,755,452
TOTAL	\$875,281,286	\$480,029,774

*- Net Machine Income equals the money played by lottery players' minus prizes awarded to winners. Of the total Net Machine Income of \$875 million, \$480 million is allocated to education, with the remainder going to race track commissions, contractor fees, marketing, and lottery administration.

• Source: NYS Lottery



Video Lottery Earnings are Critical Revenue Sources for the Gaming Industry & Education Funding

- The video lottery program represents the fastest growing segment of the NYS Lottery, and is critical to the gaming industry and state funding.
 - The handle (or dollar amount bet) on thoroughbred and harness tracks has dropped 4 percent on races compared with the same period in 2007.²⁶ This continues a decades-long decline. The handle for horse racing has declined 72 percent since 1977.²⁷
 - OTB betting has dropped 6 percent over the same period.²⁸
 - The American Gaming Association has reported a nationwide 4.6 percent drop in casino revenue in the 3rd quarter as compared with last year.²⁹
 - Revenue for traditional lottery games from April to October went up just slightly.³⁰
 - **Bucking the trend, New York's video lottery program has seen robust increases in revenues of 12 percent, or \$73 million, through three quarters of this fiscal year.**³¹
 - With a projected state budget deficit of \$47 billion over the next 4 years, it is essential that lottery revenue does not erode and cause further cuts to education.³²
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SECTION 3: Senator Klein's Proposal For New Kinds of Video Lottery Games to Increase Education Funding



Expanding Types of Video Lottery Games at Racinos

- **New York's current video lottery** program offers electronic versions of instant scratch-off games.³³
 - Senator Klein is proposing that the video lottery program offer new games that while still lottery games, more closely resemble games like **roulette, baccarat, "twenty one",** and craps.
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Electronic Table Video Lottery Games are Constitutionally Permissible

- Previous judicial rulings on video lottery gaming (Dalton vs. Pataki) approved certain electronic applications of traditional lottery games. In doing so, the courts decided that the games under review were considered lottery games because they had the following features:
 - **The game's outcome was predominantly determined by chance (as opposed to skill)** ³⁴
 - Multiple players had the opportunity to participate in the same drawing. ³⁵ However, lottery games today such as Numbers and Win 4 allow for players to compete directly against the house.
 - Games utilized electronic versions of lottery tickets ³⁶
 - Games used centralized programming to determine random winning results which can be viewed by all players. ³⁷ Currently, the random number generators can be located in the machine yet monitored and controlled by the lottery central computer.
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Sample Electronic Table Video Lottery Games Resembling Traditional Lottery Game

- Traditional Lottery Game
 - Players select numbers printed on a ticket. A drawing occurs later using a machine filled with numbered balls. A winning combination of numbers is announced. Players compare the numbers they selected to the winning combination determined randomly. Prizes are awarded based on the **number of matching numbers on players' tickets to the winning combination** produced by the machine.³⁸
 - Electronic Table Video Lottery Game: Roulette or Craps
 - Players select a combination of numbers, symbols, or colors from a broader array of choices on a video screen. A mechanical or electronic device connected to the electronic table game randomly selects a winning **combination. Players' choices are compared to the winning combination** randomly selected by the machine, and winnings are allocated to the **players' electronic account balance on the video lottery game.**³⁹
 - The features of the electronic table video lottery games are legally identical to the operation of traditional lottery games and meet the criteria of lottery games as established by the courts.
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Revenue Projections for Electronic Table Video Lottery Games

Education Funding Generated by the Addition of Electronic Table Video Lottery Games to Racinos			
Racino	Video Gaming Devices- Fiscal Yr. 2007	Projected Revenues from the Installation of Electronic Table Video Lottery Games	Projected Revenue to Education Fund & L Administration
Batavia Downs Gaming	601	\$16,207,000	\$8,103,000
Empire City Yonkers Raceway	5,334	\$106,132,000	\$60,517,000
Fairgrounds Gaming & Raceway	959	\$19,697,000	\$8,667,000
Finger Lakes Gaming & Raceway	1,199	\$22,037,000	\$11,900,000
Monticello Gaming & Raceway	1,587	\$25,820,000	\$12,393,000

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