

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Finance and Tax Committee

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BILL: CS/CS/SB 2434

INTRODUCER: Finance and Tax Committee Regulated Industries Committee and Senator Geller

SUBJECT: Video Lotteries

DATE: April 19, 2007

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR  | REFERENCE | ACTION        |
|----|----------------|-----------------|-----------|---------------|
| 1. | <u>Sumner</u>  | <u>Imhof</u>    | <u>RI</u> | <u>Fav/CS</u> |
| 2. | <u>Keating</u> | <u>Johansen</u> | <u>FT</u> | <u>Fav/CS</u> |
| 3. | _____          | _____           | <u>GA</u> | _____         |
| 4. | _____          | _____           | _____     | _____         |
| 5. | _____          | _____           | _____     | _____         |
| 6. | _____          | _____           | _____     | _____         |

**I. Summary:**

This bill provides for the establishment, operation, and regulation of video lottery games. The games would be located at pari-mutuel sites and regulated by the Department of the Lottery. Thirty-three pari-mutuel permitholders at 26 facilities and the Ocala Breeders facility will be eligible for licensure of video lottery terminals.

This bill substantially amends the following sections of the Florida Statutes: 24.103, 24.105, and 212.02. It also creates the following sections of the Florida Statutes: 24.125, 24.126, 24.127, 24.128, 24.129, 24.130, 24.131, 24.132, 24.133, 24.134, 24.136, 24.137, 24.138, and 24.139.

**II. Present Situation:**

Article X, section 7 of the Florida Constitution allows for the operation of a state-operated lottery. The Florida Lottery was established by the Legislature in 1987 and codified as ch. 24, F.S.

The operation of video lottery terminals is not presently authorized under Florida law, though slot machines are authorized in Broward County and Miami-Dade County, but only approved in Broward County. The only player activated lottery machines are those that dispense instant lottery game tickets following the insertion of a coin or currency by a ticket purchaser pursuant to s. 24.105(9)4., F. S. Under s. 24.102, F.S., all net proceeds from lottery games are to be used to support improvements to public education.

The following states have video lottery terminals<sup>1</sup> or video game machines:

### **South Dakota**

South Dakota was the first state to authorize video lottery terminals in 1987. The terminals are permitted in lounges and bars that are authorized to sell alcoholic beverages with a maximum of ten terminals per establishment. South Dakota defines a video lottery machine to mean “any electronic video game machine that upon insertion of cash is available to play or simulate the play of a video game, including but not limited to video poker, keno, or blackjack, authorized by the commission utilizing a video display and microprocessors in which by chance the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, or tokens.”

### **Oregon**

Oregon authorized video lottery terminals in 1991. It allows video lottery terminals in licensed establishments that sell alcoholic beverages. Oregon does not define the specific games that make up a video lottery but provides that the lottery commission “may initiate a game or games using video devices.”

### **Rhode Island**

Rhode Island authorized video lottery terminals in 1992. It limits the terminals to pari-mutuel licensees. It defines video lottery machines as “any electronic computerized video game machine that, upon the insertion of cash, is available to play a video game authorized by the lottery commission. . . .”

### **Delaware**

Delaware authorized video lottery machines at its three pari-mutuel facilities in 1994. It defines a video lottery machine to mean “any machine in which bills, coins, or tokens are deposited in order to play a game of chance in which the results including options available to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both. . . .”

### **West Virginia**

West Virginia allows video lottery terminals at racetracks and at certain establishments licensed to sell alcoholic beverages. It defines a video lottery game and video lottery broadly so that the game does not have to be based solely on chance and it provides a multitude of payment options.

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<sup>1</sup> According to the latest information provided by NCSL: 2006 State of the States, The AGA Survey of Casino Entertainment [http://www.americangaming.org/assets/files/2006\\_Survey\\_for\\_Web.pdf](http://www.americangaming.org/assets/files/2006_Survey_for_Web.pdf), La Fleur’s Fiscal 2006 VLT Special Report, published by TLF Publications; website: <http://www.lafleurs.com>, and information from Albany Law School white paper on “*What is a VLT*” 10/17/2003.

## **Louisiana**

Louisiana authorized video gaming in June 1992. It permits machines that play video draw poker at hotels, racetracks, OTB parlors and truckstops. It defines the video draw poker device in part, as any unit, mechanism, or device that upon insertion of cash is available to play or simulate the play of the game of draw poker or other card games using a cathode ray tube or video display screen where the player may win games or credits that can be redeemed for cash only.<sup>2</sup>

## **Montana**

Montana authorized video lottery gaming in 1986. It allows bingo machines which are defined as an electronic video gambling machine that, upon insertion of cash, is available to play bingo. The machine uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.<sup>3</sup> The machines may be operated at retail sites that hold liquor licenses.

## **New Mexico**

New Mexico authorized video lottery gaming in 1999. It allows machines at five racetracks and 65 nonprofit operators. It defines a gaming machine for purposes of the act as a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate a game, whether the payoff is made automatically from the machine or in any other manner.<sup>4</sup>

## **New York**

New York authorized video lottery gaming at its racetracks, or at any other racetrack licensed under article three of the racing pari-mutuel wagering and breeding law as the “New York state exposition” in 2003.<sup>5</sup>

## **Slot Machines**

During the 2004 General Election, the electors approved Amendment 4 to the State Constitution, codified as s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005. The electors approved slot machines at the pari-mutuel facilities in Broward County, but the measure was defeated in Miami-Dade County. Under the provisions of the amendment, four pari-mutuel facilities are eligible to conduct slot machine gaming in Broward County – Gulfstream Park Racing Association – thoroughbred permitholder, Pompano Park Racing – a harness racing permitholder, Dania Jai Alai – a jai alai permitholder, and Hollywood Greyhound Track – a greyhound permitholder.

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<sup>2</sup> La. Rev. Stat. Ann. Ch. 6, ss. 301-326 (2007).

<sup>3</sup> Mont. Code Ann. s. 23-5-602 (2007).

<sup>4</sup> N.M. Admin. Code tit. 15.1.16 (2007).

<sup>5</sup> N.Y. [law] s. 1617-a (McKinney 2007).

Legislation was passed during 2005 Special Session B, HB 1B, ch. 2005-362, L.O.F., that implemented Amendment 4. The Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation is charged with regulating the operation of slot machines in the affected counties.

### III. Effect of Proposed Changes:

The bill grants overall control of the video lottery terminals to the Department of the Lottery (department) and provides a start date of October 1, 2007, to have in place the capacity to support video lottery games at facilities of video lottery retailers. Each lottery terminal shall be linked, directly or indirectly, to a computer system approved by the department. According to some experts, this type of gaming could be considered Class III gaming under the Indian Gaming Regulatory Act and may be a subject for compact negotiations with the Indian tribes.

#### Definitions

The bill amends s. 24.103, F.S., and provides the following video lottery definitions:

- “Video lottery game” means an electronic game of chance and includes line-up games, traditional card games, poker, and progressive games where the jackpot grows and accumulates.
- “Video lottery terminal” (VLT’s) is defined as a machine or device on which a video lottery game is played or operated. It is not a coin-operated amusement machine as defined in s. 212.02(24), F.S., and does not include an amusement game or machine as described in s. 849.161, F.S.
- “Video lottery terminal vendor” means any person licensed by the department who engages in the business of selling, leasing, servicing, repairing, or upgrading video lottery terminals for video lottery retailers or who provides to the department or to a video lottery retailer, computer equipment, software or other functions related to video terminals.
- “Net terminal income” means currency and other consideration placed into a video lottery terminal, less payouts to or credits redeemed by players.
- “Video lottery retailers” means a pari-mutuel permitholder licensed under ch. 550, F.S., and:
  - Who is conducting a full schedule of live races or games, as described in ss. 550.002(11) and 550.475 as of October 1, 2007, or a person who is authorized to receive broadcasts of horse races under s. 550.6308, F.S.

#### Powers and duties of the department

The bill creates s. 24.105(26), F.S., requiring the Department of the Lottery to approve retailer licensure applications within ninety days from receipt of the application. Any person holding a pari-mutuel permit who has been licensed pursuant to chapter 550, meets the definition of a video lottery retailer under s. 24.103(11), F.S., and has paid the fee required in s. 24.105(27)<sup>6</sup>,

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<sup>6</sup> See Technical Deficiencies section , *infra*.

shall be deemed to have met all qualifications of licensure under this section. In addition, the department must:

- Have in place the capacity to support video lottery games at facilities of video lottery retailers by October 1, 2007;
- Hear and decide promptly and in reasonable order all video lottery related license applications and enforcement proceedings for suspension or revocation of licenses;
- Collect and disburse video lottery revenue due the department;
- Certify net terminal income of video lottery retailers by inspecting records or conducting audits;
- Maintain a list of licensed video lottery terminal vendors and a current list of all contracts between video lottery terminal vendors and video lottery retailers;
- Approve an application for a video lottery retailer within 90 days after receipt of the application; and
- Contract with an independent testing laboratory to scientifically test and technically evaluate video lottery games, video lottery terminals, and video lottery operating systems for compliance with the chapter.

### **Rules authorized**

The bill creates s. 24.125, F.S., to authorize the department to adopt rules similar to rules adopted under ch. 551, F.S., Slot Machines, regarding the regulation of video lottery retailers, video lottery products, and specifications for video lottery terminals. The initial rules to permit operation of video lotteries and the licensing of video lottery vendors must be adopted by October 1, 2007. It authorizes the department to adopt emergency rules to implement this section.

### **Video lottery minimum age**

The bill creates s. 24.126, F.S., providing that video lottery games may not be played by persons less than 21 years of age and requires that signage be posted in the pari-mutuel facilities to ensure the age requirement is enforced.

### **Video lottery games**

The bill creates s. 24.127, F.S., to provide that a video lottery retailer may offer video lottery games at any time only at the pari-mutuel facility where the video lottery retailer is licensed to conduct pari-mutuel wagering between July 1, 2007 and June 30, 2008, or at its relocated licensed pari-mutuel facility if the relocation of the facility has been approved by the division under s. 550.0555, F.S. It requires that if a video lottery retailer fails to comply with the requirement to conduct a full schedule of races or games as defined in s. 550.002(11), F.S. for any reason, the department shall order the retailer to suspend its video lottery operation. This includes races or games under s. 550.475, F.S. and being authorized to receive broadcasts of horseraces under s. 550.6308, F.S. The department may assess an administrative fine, not to exceed \$5,000 per video lottery terminal per day, against any retailer who fails to suspend its video lottery operation when ordered by the department.

For video lottery terminals located on premises, each video lottery retailer shall determine the following:

- The number of video lottery terminals and where they are to be placed in the facility not to exceed 1,500 at any pari-mutuel facility;
- The dates and hours for play not to exceed 16 hours a day except that the hours of operation may be extended by majority vote of the governing body of the municipality where the retailer is located or the governing body of the county if the retailer is not located in a municipality;
- The mix of games that will be played;
- Use of currency, coins, tokens, vouchers, electronic credits, or anything of value;
- Location and movement of video lottery terminals on the premises;
- The staffing of video lottery terminal operations on the premises; and
- The minimum and maximum betting amounts and the payout.

Payouts must be within a suitable range with a minimum of 85 percent of the value placed in the video lottery terminal.

Each retailer is required to notify the department before commencing operation of video lottery games. The department is given overall control of the system to facilitate auditing and security programs. Each terminal is required to be linked directly or indirectly to a computer system approved by the department. It is unclear how a computer would be linked indirectly.

The video lottery games may be played year-round. The income is not subject to s. 24.121, F.S., which provides for the allocation of revenues from the sale of on-line and instant lottery tickets.

The net terminal income derived from video lottery operations must be distributed as follows:

- Fifty percent (50%) is remitted to the Video Lottery Administrative Trust Fund for transfer to the Education Enhancement Trust Fund;
- Fifty-hundredths percent shall be paid by the video lottery retailer to the department to administer and regulate the operation of video lottery terminals.

These allocations must be made weekly. Amounts allocated to the Education Enhancement Trust Fund and the Administration Trust Fund must be remitted by electronic transfer within twenty-four hours after the allocation is determined.

Any person who intentionally manipulates the outcome, payoff or operation of a video lottery terminal commits a felony of the third degree.

The lottery retailer is responsible for payment of the video lottery prizes. Video monitors must be available in the video lottery terminal area to display live races or games or simulcast races or games, if the races or games are being conducted or broadcast at the facility. The area must also provide for wagering on the pari-mutuel events.

**Licensure of video lottery terminal vendors**

The bill creates s. 24.128, F.S., providing that vendors shall be licensed by the department by July 1, 2007, and emergency rule making authority is given to expedite the process. A vendor may not have any other interest or business relationships with a retailer.

**Local zoning of pari-mutuel facilities**

The bill creates s. 24.129, F.S., providing that having video lottery terminals in pari-mutuel facilities will not change the character of the pari-mutuel facility for local zoning purposes.

**Video lottery terminals**

The bill creates s. 24.130, F.S., providing standards for video lottery terminals. The standards include that the terminals must be approved by the department. Each approved terminal must:

- Be protected against manipulation;
- Have one or more tamperproof mechanisms that accept currency, coins, tokens, or vouchers in exchange for game credits.
- Be capable of suspending play as a result of tampering; and
- Be capable of being linked to a central computer to audit the operation and to obtain financial and program information as required by the department.

**Video lottery terminal training program**

The bill creates s. 24.131, F.S., providing that every licensed video lottery terminal vendor shall submit a training program for the service and maintenance of terminals and equipment for approval by the department. The bill also provides that every video lottery terminal service employee must complete requirements of the manufacturer's training program before performing service, maintenance, or repairs on video lottery terminals or associated equipment.

**Video lottery retailer; agreements required**

The bill creates s. 24.132, F.S., providing for video lottery retailer agreements that are binding written agreements between the retailer and the association representing a majority of the thoroughbred racehorse owners and trainers at that location. The video lottery retailer may not conduct video lottery games unless it has a binding written agreement on file with the department between it and the Florida Thoroughbred Breeders' Association, Inc., governing the payment of breeders' s, stallion, and special racing awards on live thoroughbred races conducted at the retailer's pari-mutuel facility.

**Notice of availability of assistance for compulsive gambling required**

The bill creates s. 24.133, F.S., requiring the owner of each facility at which video lottery games are conducted to post signs providing a telephone number that a person with a gambling problem can call.

**Compulsive gambling program**

The bill creates s. 24.134, F.S., creating the Compulsive Gambling Program. Specifically, the bill provides that the Alcohol, Drug Abuse, and Mental Health Program Office within the Department of Children and Family Services shall establish a program for public education, awareness, and training regarding problem and compulsive gambling and the treatment and prevention of problem and compulsive gambling.

**Licensure of video lottery retailer**

The bill provides that a video lottery retailer is entitled to a caterer's license pursuant to the provisions of s. 565.02 on days in which the pari-mutuel facility is open to the public for the purpose of video lottery play.

**Other prohibited activities**

The bill creates s. 24.137, F.S., providing prohibitions on complimentary or reduced-cost alcoholic beverages and automated teller machines or similar devices in the designated video terminal gaming area. It also prohibits the video lottery retailer from accepting or cashing any personal, third-party, corporate, business, or government-issued check from any person.

Only tickets or paper currency or an electronic payment system for wagering are permitted at the video lottery terminal. They can be exchanged for cash, merchandise, or other items of value. An electronic credit system may be used for receiving wages and making payouts.

**Exclusions of certain persons**

The bill creates s. 24.138, F.S., providing the department authority to exclude persons who have been ejected from a facility of a video lottery retailer or slot machine licensee in this or any other state by the government entity that regulates gaming.

**Department office space**

The bill creates s. 24.139, F.S. providing for office space for the department at the video lottery terminal facility.

**Definitions**

The bill amends s. 212.02, F.S., excluding from the definition of "coin-operated amusement machine" a video lottery terminal operated pursuant to ch. 24, F.S.

**Effective Date**

This bill shall take effect upon becoming a law.



**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

Subsection (b) of s. 18, Art. VII, State Constitution, provides that except upon approval of each house of the legislature by 2/3 vote of the membership, the legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority exists on February 1, 1989.

The bill appears to reduce the revenue-raising authority of cities and counties in excess of the significant impact threshold (\$1.9 million annually in the aggregate). To be enacted, the bill may require a two-thirds vote of the membership of each house of the Legislature.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference met March 22, 2007 and estimated the following revenue impacts from implementation of video lottery:

|                           | FY 2007-08 Annualized | FY 2007-08 Cash      | FY 2008-09 Cash |
|---------------------------|-----------------------|----------------------|-----------------|
| General Revenue Sales Tax | (67.3)                |                      | (33.6)          |
| State Trust Sales Tax     | (0.2)                 |                      | (0.1)           |
| EEFT Video Lottery Tax    | 975.0                 |                      | 487.5           |
| EEFT Traditional Lottery  | (55.4)                |                      | (27.7)          |
| Lottery Admin. & Fees*    | 61.8                  |                      | 56.9            |
| <b>Total State Impact</b> | <b>913.9</b>          |                      | <b>483.1</b>    |
| Revenue Sharing           | (2.2)                 |                      | (1.1)           |
| Local Gov't Half Cent     | (6.5)                 |                      | (3.2)           |
| Local Option Sales Tax    | (6.4)                 |                      | (3.2)           |
| <b>Total Local Impact</b> | <b>(15.1)</b>         |                      | <b>(7.5)</b>    |
| <b>Total Impact</b>       | <b>\$ 898.8</b>       | <b>Indeterminate</b> | <b>\$ 475.6</b> |

\* Although not included in the bill, this estimate assumes an annual \$2 million license fee to be paid by every retailer.

**B. Private Sector Impact:**

The department also states that the pari-mutuel industry could incur costs to comply with the requirements of the bill.

**C. Government Sector Impact:**

The Florida Lottery projects the following expenditures:

- A central computer system
- 24 Permanent FTE’s
- 2 Temporary FTE’s

|                        |             |
|------------------------|-------------|
| Fiscal Year 07-08      | \$8,800,000 |
| Annual Recurring Costs | \$8,930,000 |

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The department states that by requiring the Lottery to “license” video lottery terminal vendors and retailers and by prescribing certain enforcement authority over such vendors and retailers, the bill changes the nature and character of the Lottery. Under s. 24.102(2)(b), F.S. the Lottery is directed to operate as much as possible in the manner of an entrepreneurial business enterprise. The department states that this fundamental change warrants serious consideration before adoption. The department is also concerned about the time frame for adopting the rules required by the bill.

The department raises legal concerns over the definition of a “video lottery game” which is defined as one that is played on a video lottery terminal in which a lottery game is played or simulated, involving “any element of chance, skill, or both.”

The department states that the legislation raises an issue with respect to the type of games authorized by the bill that warrants consideration. Article X, Section 7 of the Florida Constitution, adopted in 1968, prohibits lotteries other than the pari-mutuel pools that were authorized by law as of the date of adoption of that article. Thereafter, in 1986, Article X, Section 15 was adopted, authorizing lotteries to be operated in the state. Pursuant to that provision, the state lottery was created by statute (chapter 24) in 1987. Thus, the pari-mutuel pools authorized in Article X, Section 7 and the lotteries authorized in Article X, Section 15 are the only permissible lotteries in Florida. This definition was first recognized by the Florida Supreme Court at least as early as 1935 and has been followed also by the courts of other states.<sup>7</sup>

The department states that a lottery game is one that consists of three elements: chance, prize and consideration.<sup>8</sup> The department points out that this bill defines “video lottery game” as one that is

<sup>7</sup> *Lee v. City of Miami*, 121 Fla. 93 (Fla. 1935)

<sup>8</sup> Chapter 24, F.S., does not define lottery. There are currently standard jury instructions that include a definition of “lottery” when describing how to determine if an illegal lottery operation was arranged in Standard Jury Instruction 22.8 . It defines it as a game of chance in which smaller sums of money or things of smaller value are risked for the chance of getting money or property of greater value upon the happening of an uncertain event. The three elements of a lottery are: (1) consideration that

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played on a video lottery terminal in which a lottery-type game is played or simulated, involving any element of chance, skill or both.’ If a video lottery game can include an element of skill, the department states that it is not a “lottery” game as defined by the courts and thus, may not be one that is authorized by the Constitution.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.



## **VIII. Summary of Amendments:**

None.

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