

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.)

Prepared By: General Government Appropriations Committee

BILL: CS/CS/CS/SB 2434

INTRODUCER: General Government Appropriations Committee, Finance and Tax Committee,
 Regulated Industries Committee, and Senator Geller

SUBJECT: Video Lotteries

DATE: April 24, 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>Pigott</u>	<u>DeLoach</u>	<u>GA</u>	<u>Fav/CS</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 Lottery (department). Thirty-three pari-mutuel permit holders at 26 facilities and the Ocala Breeders facility will be eligible for licensure of video lottery terminals. According to the March 22, 2007, Revenue Estimating Conference, the fiscal impact to General Revenue is (\$67.3) million and \$920 million in additional revenues to the Educational Enhancement Trust Fund.

The bill makes several changes to ch. 551, F.S., related to slot machine gaming. It provides additional definitions, clarifies the license fee timeframe and the bonding requirements, and provides for drug testing, temporary and universal licenses and additional discipline. It provides for slot machine storage and training. The bill provides for 2,500 slot machines per facility. It provides for extension of hours of operation by local governments, provides that ATM machines and check cashing are not allowed in the gaming areas, and provides for progressive games within or between the facilities. It allows shipment of gaming devices including slot machines into this state provided the destination of the shipment is an eligible facility.

On April 3, 2007, the Revenue Estimating Conference released a consensus estimate of the fiscal impact of increasing the maximum number of slot machines to 2,000 at each eligible facility, while extending the hours of operation upon approval of the local governing body where the facility is located. In addition, the Conference estimated the impact of establishing when payment of annual slot machine license must be made.

The fiscal impact of the slot machine gaming portion of the bill while exercising those Revenue Estimating Conference parameters resulted in the following:

- A \$9 million non-recurring negative impact to the General Revenue Fund in the Fiscal Year 2006-2007, due to the license fee due date change.
- A \$700,000 non-recurring negative impact in Fiscal Year 2007-2008 with a \$2.2 million negative impact to the General Revenue Fund on a recurring basis for increasing the number of slot machines.
- A \$9.4 million non-recurring positive impact in Fiscal Year 2007-2008, with a \$30 million positive impact on a recurring basis to the Educational Enhancement Trust Fund for increasing the number of slot machines in each facility.

The bill provides an effective date upon becoming law.

This bill substantially amends the following sections of the Florida Statutes: 24.103, 24.105, and 212.02.

This bill 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, 24.139, 551.102, 551.103, 551.104, 551.1045, 551.106, 551.107, 551.109, 551.114, 551.116, 551.121, and 849.15.

II. Present Situation:

Section 7, Art. X of the State 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 terminals¹ 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

¹ 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, 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.

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.

Louisiana

Louisiana authorized video gaming in June 1992. It permits machines that play video draw poker at hotels, racetracks, OTB parlors and truck stops. 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.²

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

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

by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.³ 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.⁴

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 2003.⁵

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 permit holder, Pompano Park Racing – a harness racing permit holder, Dania Jai Alai – a jai alai permit holder, and Hollywood Greyhound Track – a greyhound permit holder.

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.

Definitions

Section 551.102, F.S., defines “slot machine revenues” as the total of all cash and property received by the slot machine licensee from slot machine gaming operations, less the amount of cash, cash equivalents, credits, and prizes paid to winners of slot machine gaming.

³ Mont. Code Ann. s. 23-5-602 (2007).

⁴ N.M. Admin. Code tit. 15.1.16 (2007).

⁵ N.Y. [law] s. 1617-a (McKinney 2007).

Powers and duties

Section 551.103, F.S., provides for powers and duties of the division to adopt rules necessary to implement, administer, and regulate slot machine gaming. The rules shall include:

- Procedures for applying for a license and renewal of a license.
- Technical requirements and the qualifications contained in this chapter that are necessary to receive a slot machine license or slot machine occupational license.
- Procedures to scientifically test and technically evaluate slot machines for compliance with this chapter.
- Procedures relating to slot machine revenues, including verifying and accounting for such revenues, auditing, and collecting taxes and fees consistent with this chapter.
- Procedures for regulating, managing, and auditing the operation, financial data, and program information relating to slot machine gaming that allow the division and the Department of Law Enforcement to audit the operation, financial data, and program information of a slot machine licensee.
- Procedures for requiring each licensee at his or her own cost and expense to supply the division with a bond having the penal sum of \$2 million payable to the Governor and his or her successors in office for the licensee's first year of slot machine operations. Annually thereafter, the licensee shall file a bond having a penal sum that is determined each year by the division pursuant to rules adopted by the division and that approximates the anticipated state revenues from the licensee's slot machine operation. However, the bond may not in any case be less than \$2 million.
- Procedures for requiring licensees to maintain specified records and submit any data, information, record, or report, including financial and income records, required by this chapter or determined by the division to be necessary to the proper implementation and enforcement of this chapter.
- A requirement that the payout percentage of a slot machine be no less than 85 percent.
- Minimum standards for security of the facilities, including floor plans, security cameras, and other security equipment.

License to conduct slot machine gaming

Section 551.104, F.S., provides that a license shall be issued to conduct slot machine gaming after the division has investigated the applicant and there has been a finding that the applicant is qualified, the application is complete, and the fee has been paid.

The slot machine licensee must comply with the following provisions among others:

- Continue to be in compliance with the provisions of ch. 551, F.S.
- Continue to be in compliance with ch. 550, F.S., where applicable, and maintain the pari-mutuel permit and license in good standing pursuant to the provisions of ch. 550, F.S.
- Conduct no fewer than a full schedule of live racing or games as defined in s. 550.002(11), F.S.
- Upon approval of any changes relating to the pari-mutuel permit by the division, be responsible for providing appropriate current and accurate documentation on a timely basis to

the division in order to continue the slot machine license in good standing, including changes in ownership or interest of a slot machine license of five percent or more:

- Allow the division and the Department of Law Enforcement unrestricted access to and right of inspection of facilities of a slot machine licensee in which any activity relative to the conduct of slot machine gaming is conducted.
- Ensure that the facilities-based computer system that the licensee will use for operational and accounting functions of the slot machine facility is specifically structured to facilitate regulatory oversight. The facilities-based computer system is required to be designed to provide the division and the Department of Law Enforcement with the ability to monitor, at any time on a real-time basis, the wagering patterns, payouts, tax collections, and such other operations as necessary to determine whether the facility is in compliance with statutory provisions and rules adopted by the division for the regulation and control of slot machine gaming. The division and the Department of Law Enforcement are required to have complete and continuous access to this system.
- Ensure that each slot machine is protected from manipulation or tampering to affect the random probabilities of winning plays. The division or the Department of Law Enforcement shall have the authority to suspend play upon reasonable suspicion of any manipulation or tampering. When play has been suspended on any slot machine, the division or the Department of Law Enforcement may examine any slot machine to determine whether the machine has been tampered with or manipulated and whether the machine should be returned to operation.
- Submit a security plan, including the facilities' floor plan, the locations of security cameras, and a listing of all security equipment that is capable of observing and electronically recording activities being conducted in the facilities of the slot machine licensee.

Temporary License

Section 551.1045, F.S., provides for temporary licensure of slot machine licensees after 180 days following the effective date of the act if the division has not adopted rules to implement the provisions of the chapter.

License Fee

Section 551.106(1), F.S., requires that, upon submission of the initial application for a slot machine license and annually thereafter upon submission of a renewal application, the licensee pay to the division's non-refundable license fee of \$3 million.

Tax on Slot Machine Revenue

Section 551.106(2), F.S., imposes a 50 percent tax on slot machine revenues. The slot machine tax revenues are transferred from the Pari-mutuel Wagering Trust Fund to the Educational Enhancement Trust Fund of the Department of Education.

Slot machine occupational licenses

Section 551.107(1), F.S., provides that licensed individuals and entities under this section require heightened state scrutiny which includes fingerprints for a criminal records check.

Section 551.107(2), F.S., requires licenses be issued to persons who hold positions with access to designated slot machine gaming areas for the following categories:

- General occupational licenses for general employees, food service, maintenance, and other similar service and support employees with access to the designated slot machine gaming area.
- Service and support employees with a current pari-mutuel occupational license issued pursuant to ch. 550, F.S., and a current background check are not required to submit to an additional background check for a slot machine occupational license as long as the pari-mutuel occupational license remains in good standing.
- Professional occupation licenses for any person, proprietorship, partnership, corporation, or other entity that is authorized by a slot machine licensee to manage, oversee, or otherwise control daily operations as a slot machine manager, floor supervisor, security personnel, or any other similar position of oversight of gaming operations.
- Business occupational licenses for any slot machine management company or slot machine business associated with slot machine gaming or a person who manufactures, distributes, or sells slot machines, slot machine paraphernalia, or other associated equipment to slot machine licensees or any person not an employee of the slot machine licensee who provides maintenance, repair, or upgrades or otherwise services a slot machine or other slot machine equipment.

It also provides that the slot machine occupational licenses are not transferable.

Section 551.107(3), F.S., provides that a slot machine licensee shall not employ or otherwise allow a person to work at a slot machine facility unless the person holds a valid occupational license. It requires that the business must also hold an occupational license.

Section 551.107(4), F.S., requires that persons seeking a slot machine occupational license or renewal must apply to the division and include the appropriate fee. The division shall establish, by rule, an annual renewal schedule. The license is valid for three years. Fees shall not exceed \$50 for a general or professional occupational license of an employee or \$1,000 for a non-employee providing goods or services to the slot machine licensee. License fees for general occupational licenses shall be paid for by the slot machine licensee.

Section 551.107(5), F.S., provides that if the state gaming commission or other similar regulatory authority of another state or jurisdiction extends to the division reciprocal courtesy to maintain disciplinary control, the division may:

- Deny an application for or revoke, suspend, or place conditions or restrictions on a license of a person or entity who has been refused a license by any other state gaming commission or similar authority.
- Deny an application for or suspend or place conditions on a license of any person or entity who is under suspension or has unpaid fines in another jurisdiction.

Section 551.107(6), F.S., allows the division to deny, suspend, revoke or declare ineligible an occupation license if the applicant or licensee:

- Violates provisions of ch. 551, F.S., or rules of the division.
- Has been convicted in this state or any other state of a capital felony or a felony.
- Has been convicted of an offense in any other state which would be a felony under the laws of this state involving:
 - Arson.
 - Trafficking in, conspiracy to traffic in, smuggling, importing, conspiracy to smuggle or import, or delivery, sale, or distribution of a controlled substance.
 - A crime involving a lack of good moral character, or has had a slot machine gaming license revoked by this state.
 - Has had a slot machine gaming license revoked by any other jurisdiction for an offense related to slot machine gaming.
- Has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the U.S., if the felony or misdemeanor is related to gambling or bookmaking as contemplated in s. 849.25, F.S.

Section 551.107(7), F.S., requires that, upon initial application and every three years thereafter, fingerprints for all slot machine occupational license applications be taken as required by the Florida Department of Law Enforcement and the Federal Bureau of Investigations for a level II criminal records check.

Prohibited acts

Section 551.109(1), F.S., provides for administrative fines or civil penalties up to \$10,000 for persons who intentionally make or cause another to make false statements in any report, disclosure, application, or any other document required under the chapter or rule.

Section 551.109(2), F.S., provides for administrative fines or civil penalties up to \$10,000 for any person who possesses a slot machine without a license or who possesses a slot machine at any location other than at the slot machine licensee facility.

Section 551.109(3), F.S., provides that any person who knowingly excludes, or takes any action in an attempt to exclude, anything or its value from the deposit, counting, collection, or computation of revenues from slot machine activity, or any person who by trick, sleight-of-hand performance, a fraud or fraudulent scheme, or device wins or attempts to win, for himself or herself or for another, money or property or any combination thereof or reduces or attempts to reduce a losing wager in connection with slot machine gaming commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Section 551.109(4), F.S., provides for criminal penalties for any person who intentionally manipulates the outcome, payoff, or operation of a slot machine by physical tampering, or by use of any object, instrument, or device, whether mechanical, electrical, magnetic, or other means, manipulates the outcome, payoff, or operation of a slot machine.

Section 551.109(5), F.S., provides that theft of any slot machine proceeds or of property belonging to the slot machine operator or licensed facility by an employee of the operator or facility or by an employee of a person, firm, or entity that has contracted to provide services to

the operator or facility constitutes a felony of the third degree, punishable as provided in ss. 775.082 or 775.083, F.S.

Section 551.109(6), F.S., provides that any law enforcement officer or slot machine operator who has probable cause to believe that a violation of s. 551.109(3), (4), or (5), F.S., has been committed by a person and that the officer or operator can recover the lost proceeds from the activity by taking the person into custody may, for the purpose of attempting to effect the recovery or for prosecution, take the person into custody on the premises and detain the person in a reasonable manner and for a reasonable period of time.

Section 551.114, F.S., requires that the designated slot gaming areas:

- May allow for play, up to 1500 slot machines.
- Have pari-mutuel races or games displayed and offer pari-mutuel wagering on live, intertrack, and simulcast races.
- Provide signs warning of the risks and dangers of gambling, showing the odds of winning and payout percentages, and informing patrons of the toll-free telephone number available to provide information and referral services regarding compulsive or problem gambling shall be posted.
- Be located within the current live gaming facility or in existing building that must be contiguous and connected to the live gaming facility. Any new construction must be contiguous and connected to the live gaming facility.
- Provide adequate office space at no cost to the division and the Department of Law Enforcement for the oversight of slot machine operations.

Days and hours of operation

Section 551.116, F.S., provides that the slot machine gaming areas may be open 365 days a year and open for a maximum of 16 hours per day.

Prohibited activities and devices

Section 551.121, F.S., prohibits:

- Complimentary or reduced-cost alcoholic beverages from being served to persons playing a slot machine. The cost of the alcoholic beverages shall cost at least the same amount as alcoholic beverages served to the general public at a bar within the facility.
- Making any loan, providing credit, or advancing cash in order to enable a person to play a slot machine.
- ATMs or similar devices designed to provide credit or dispense cash from a person's personal account to be located within the facilities of the slot machine licensee.
- Accepting or cashing, any personal, third-party, corporate, business, or government-issued check from any person.

A slot machine or the computer operating system linking the slot machine may not be linked by any means to any other slot machine or computer operating system of another slot machine

licensee. Progressive systems are prohibited from use with slot machines within or between licensed facilities.

Paper currency or tickets or an electronic payment system for wagering and the return or delivery of payouts to the player in the form of tickets that may be exchanged for cash, merchandise, or other items of value are the only accepted methods of payment at the slot machine facility.

Manufacture, sale, possession, etc., of coin-operated devices prohibited

Section 849.15, F.S., permits shipment of gaming devices, including slot machines, into any county of this state where slot machine gaming is authorized under ch. 551, F.S.

III. Effect of Proposed Changes:

The bill grants overall control of the video lottery terminals to the department and provides a start date of January 1, 2008, 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.

Section 1 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 retailer” means a pari-mutuel permit holder licensed under chapter 550, F.S., who holds a license to conduct a full schedule of live races or games, as described in s. 550.002(11), between July 1, 2006 and June 30, 2007, or a person who is authorized to receive broadcasts of horse races under s. 550.6308.

Section 2 creates subsections (21)-(26) in s. 24.105, F.S., requiring the department to:

- Have in place the capacity to support video lottery games at facilities of video lottery retailers by January 1, 2008;
- 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.

Section 3 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 terminal vendors, video lottery games, 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 January 1, 2008. It authorizes the department to adopt emergency rules to implement this section.

Section 4 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.

Section 5 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 horse races 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 operated by the department or by the department's contracted vendor. 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 are as follows:

- Nonrefundable license fee of \$3 million to be deposited into the Operating Trust Fund and used by the department to administer the provisions of the bill.
- Fifty percent is remitted to the Operating 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.

Section 6 creates s. 24.128, F.S., providing that vendors shall be licensed by the department by October 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.

Section 7 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.

Section 8 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.

Section 9 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.

Section 10 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.

Section 11 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.

Section 12 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.

Section 13 creates s. 24.137, F.S., to provide 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.

Section 14 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.

Section 15 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.

Section 16 creates s. 24.139, F.S. providing for office space for the department at the video lottery terminal facility.

Section 17 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.

Section 18 creates the definition of “non-redeemable credits” in s. 551.102(6), F.S., and defines it as slot machine operating credits that cannot be redeemed for cash or any other thing of value by a slot machine, kiosk, or the slot machine licensee that are provided free of charge to patrons. The credits do not constitute “non-redeemable credits” until they are metered as credit into a slot machine and recorded in the facility-based monitoring system.

The bill amends s. 551.102(12), F.S., to exclude non-redeemable credits from the definition of “slot machine revenues.” “Non-redeemable credits” will allow the slot machine licensee to offer free spins or free play credit to a patron of the slot machine facility. These credits have no cash value.

Section 19 amends s. 551.103(1)(f), F.S., to clarify that the \$2 million bond should be paid to the Governor each year. It deletes language that would allow the bond amount to be increased.

The bill creates s. 551.103(j), F.S., to provide that the division must have procedures for requiring slot machine licensees to implement and establish drug testing programs for all slot occupational licensees.

Section 20 creates s. 551.104(i)6., F.S., to require the slot machine licensee to create and file with the division a written policy for the implementation of a drug testing program which includes but is not limited to requiring each employee to sign an agreement that he or she understands that the slot machine facility is a drug-free work place.

Section 21 amends s. 551.1045, F.S., to delete language referring to temporary slot machine licenses and creates new language for temporary occupational licenses. It provides that, notwithstanding s. 120.60, F.S., the division may issue a temporary occupational license upon proof of no criminal convictions. The license remains valid until the division grants the license or notifies the applicant of its intent to deny licensure. A person is limited to one temporary license per year and it is nontransferable.

Section 22 amends s. 551.106(1)(a), F.S., to provide that the \$3 million license fee is to be paid on the anniversary date of issuance of the initial license and then annually thereafter.

Section 23 amends s. 551.106(3), F.S., effective January 1, 2008, to allow each slot machine licensee a tax credit in the current fiscal year equal to the amount paid by the licensee in the prior fiscal year to a local government according to any slot revenue sharing agreements made with the local government where the slot machine licensee is located. The total amount of the credit may not exceed 3.7% of the total taxes paid to the division in the previous fiscal year.

Section 24 amends s. 551.107(2)(a)2., F.S., to provide for a professional occupational license for any person not an employee of the slot machine licensee who provides maintenance, repair, or upgrades or otherwise services a slot machine or other slot machine equipment.

Section s. 551.107(2)(a)3., F.S., is amended to exclude business occupational licenses for persons who provide maintenance, repair, or upgrades or otherwise service a slot machine or other slot machine equipment.

The bill amends s. 551.107(2)(b), F.S., to provide for a universal occupational license. It allows the division to issue a combination license for pari-mutuel occupational and cardroom licenses.

The bill creates s. 551.107(4)(b), F.S., to provide that the slot machine license or combination license shall be valid for the same three-year term as a pari-mutuel occupational license.

The bill creates s. 551.107(9), F.S., to provide that the division may deny, revoke, or suspend any occupational license if the applicant or holder of the license has unpaid obligations or defaults on an obligation or writes bad checks.

The bill creates s. 551.107(10), F.S., to provide that the division may fine, or suspend or revoke, or place conditions on the licensee's license if they provide false information under oath regarding an application for a license or an investigation by the division.

The bill creates s. 551.107(11), F.S., to provide that the division may impose a civil fine of up to \$5,000 for each of violation under the chapter or rules of the division.

Section 25 amends s. 551.109(2), F.S., to provide that persons who are slot machine manufacturers or distributors and hold appropriate licenses issued by the division are authorized to maintain a slot machine storage and maintenance facility at any location in a county where slot machine gaming is authorized.

It also provides that certified education facilities may maintain slot machines for purposes of education and licensure as slot machine technicians, inspectors, or investigators. It also gives the Department of Law Enforcement authority to possess slot machines for training and testing purposes.

Section 26 amends s. 551.114(1), F.S., to increase the number of slot machines allowed in the slot machine licensee facility from 1,500 to 2,500.

Section 27 amends s. 551.116, F.S., to provide that the hours of operation may be extended by majority vote of the municipality where the slot machine facility is located or the governing body of the county if the slot machine facility is not located in the municipality.

Section 28 amends s. 551.121(3), F.S., to provide that automated teller machine or similar devices are not allowed in the designated slot machine gaming areas of a facility. This language will allow for automated teller machines and similar devices to be located on any other location of the pari-mutuel facility other than the slot machine gaming area.

The bill amends s. 551.121(4), F.S., to provide that a slot machine licensee may not accept or cash any checks within the designated slot machine gaming areas.

The bill amends s. 551.121(5), F.S., to allow slot machines or the computer operating system to be linked by any means to any other slot machine or computer operating system of another slot machine licensee. It allows a progressive system to be used in conjunction with slot machines within or between licensed facilities.

Section 29 amends s. 849.15(1), F.S., to allow shipment of gaming devices including slot machines into this state provided the destination of the shipment is an eligible facility defined in s. 551.102, F.S., or the facility of a slot machine manufacturer or slot machine distributor as provided in s. 551.109(2)(a), F.S. It deletes the provision that limited shipment of slot machines to any eligible county.

Section 30 provides an appropriation.

Section 31 provides that this act 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 2007-2008 Annualized	FY 2007-2008 Cash	FY 2008-2009 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
Total State Impact	913.9		483.1
Revenue Sharing	(2.2)		(1.1)
Local Gov't Half Cent	(6.5)		(3.2)
Local Option Sales Tax	(6.4)		(3.2)
Total Local Impact	(15.1)		(7.5)
Total Impact	\$ 898.8	Indeterminate	\$ 475.6

*Estimate assumes an annual \$2 million license fee to be paid by every retailer.

The Revenue Estimating Conference estimated the total fiscal impact of the bill from the increase in the number of authorized slot machines to be a positive increase to the Educational Enhancement Trust Fund of \$9.4 million in Fiscal Year 2007-2008 and \$30.0 million on a recurring basis.

Fiscal Year 2007-2008

Issue	<u>General Revenue</u>		<u>State Trust</u>		<u>Local</u>		<u>Total</u>	
	Cash	Recurr	Cash	Recurr	Cash	Recurr	Cash	Recurr
Increase Hours of Operation - Local Option	(**)	(**)	**	**	(**)	(**)	**	**
License Fee Due Date Change *	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Increase Max. # of Machines to 2,000	(0.7)	(2.2)	9.4	30.0	(0.2)	(0.5)	8.5	27.3
Nonredeemable Credits Not Included in Net Income	0.0	0.0	(**)	(**)	0.0	0.0	(**)	(**)

* Fiscal Year 2006-2007 impact of (\$9.0) million to the General Revenue Fund.

B. Private Sector Impact:

The Department of Lottery also states that the pari-mutuel industry could incur costs to comply with the requirements of the bill. The bill may provide more revenue to the slot machine licensees by allowing additional slot machines and progressive play on the slot machines. The slot machine licensees may incur costs associated with implementing a drug testing program.

C. Government Sector Impact:

The Department of Lottery projects a fiscal impact of \$10 million and 24 full time positions to administer the provisions of this bill.

The Department of Business and Professional Regulation would incur minor costs relating to rulemaking for drug testing programs. However, this cost can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Lottery 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 of Lottery states that this fundamental change warrants serious consideration before adoption.

The Department of Lottery 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 of Lottery 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.⁶

⁶ *Lee v. City of Miami*, 121 Fla. 93 (Fla. 1935)

The Department of Lottery states that a lottery game is one that consists of three elements: chance, prize and consideration.⁷ The Department of Lottery points out that this bill defines “video lottery game” as one that is 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 of Lottery 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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⁷ 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 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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