

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Subcommittee on Finance and Tax

BILL: CS/SB 1594

INTRODUCER: Regulated Industries Committee and Senator Sachs

SUBJECT: Pari-mutuel Permitholders

DATE: March 22, 2011 **REVISED:** 4/11/2011

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Fav/CS
2.	Fournier	Diez-Arguelles	BFT	Pre-meeting
3.			BGA	
4.			BC	
5.			RC	
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This CS deletes the live racing requirements for greyhound permitholders. It extends the deadline for applying to the Division of Pari-mutuel Wagering (division) of the Department of Business and Professional Regulation (department) for the live racing dates, allowing greyhound permitholders time to amend their completed applications and remove or reduce their live racing schedule.

The CS permits greyhound permitholders to transfer unused tax credits at any time during the year, rather than once per year and reduces the tax on handle for greyhound tracks that run live racing. However, any greyhound permitholder that is not conducting live racing during the fiscal year shall provide three percent of the intertrack wagering handle to the host track for payment of purses at the host track.

The CS provides that greyhound permitholders may conduct intertrack wagering and, if applicable, operate slot machine gaming operations, regardless of whether they have run live greyhound racing. It provides that a greyhound permitholder may operate a cardroom, regardless

of live racing, if the greyhound permitholder has conducted ten years of live racing prior to application for the cardroom license.

This CS amends the following sections of the Florida Statutes: 550.002, 550.01215, 550.054, 550.0951, 550.09514, 550.26165, 550.615, 550.6305, 551.104, 551.114, and 849.086.

II. Present Situation:

Background

The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation provides regulatory oversight to pari-mutuel wagering activities, cardrooms located at pari-mutuel facilities, and slot machines located at pari-mutuel facilities located in Miami-Dade and Broward Counties. The mission of the division is the efficient, effective and fair regulation of authorized gaming at pari-mutuel facilities in Florida.¹

The division's primary responsibilities include:

- Ensuring that races and games are conducted fairly and accurately;
- Ensuring the safety and welfare of racing animals;
- Collecting state revenue accurately and timely;
- Issuing occupational and permitholder operating licenses;
- Regulating pari-mutuel, cardroom, and slot machine operations;
- Ensuring that permitholders, licensees, and businesses related to the industries comply with state law; and
- Serving as the State Compliance Agency for the Compact between the Seminole Tribe of Florida and the State of Florida.

The division provides oversight to:

- 35 permitholders operating at 28 facilities:
 - 16 Greyhound
 - 3 Thoroughbred
 - 1 Harness
 - 6 Jai-Alai
 - 1 track offering limited intertrack wagering and horse sales
 - 1 Quarter Horse
- 23 Cardrooms operating at pari-mutuel facilities
- 5 Slot facilities located in Broward and Miami-Dade County pari-mutuel facilities

¹ <http://www.myflorida.com/dbpr/pmw/index.html> (last visited February 28, 2011).

Greyhound Racing

Greyhound racing was authorized in Florida in 1931.² Betting is permitted on the outcome of the races around an oval track. The greyhounds typically chase a “lure,” which is usually a mechanical hare or rabbit. Racing greyhounds are those which are bred, raised, or trained to be used in racing at a pari-mutuel facility and are registered with the National Greyhound Association.³

Greyhound Racing Pari-Mutuel Facilities			
Facility	Location	Cardroom	Slots
Daytona Beach Kennel Club	960 South Williamson Blvd. Daytona Beach, FL 32114	Yes	No
Derby Lane (St. Petersburg Kennel Club)	Post Office Box 22099 St. Petersburg, Florida 33742	Yes	No
Ebro Greyhound Park (Washington County Kennel Club)	6558 Dog Track Road Ebro, Florida 32437	Yes	No
Flagler Greyhound Track	Post Office Box 350940 Miami, Florida 33135	Yes	Yes
Jacksonville Kennel Club (racing at Orange Park)	Post Office Box 959 Orange Park, Florida 32067	No	No
Jefferson County Kennel Club	Post Office Box 400 Monticello, Florida 32345	Yes	No
Mardi Gras Racetrack	Post Office Box 2007 Hollywood, Florida 33022	Yes	Yes
Melbourne Greyhound Park	1100 North Wickham Road Melbourne, Florida 32935	Yes	No
Naples/Ft. Meyers Greyhound Track	Post Office Box 2567 Bonita Springs, Florida 34133	Yes	No
Orange Park Kennel Club	Post Office Box 959 Orange Park, Florida 32067	Yes	No
Palm Beach Kennel Club	1111 North Congress Avenue West Palm Beach, Florida 33409	Yes	No
Pensacola Greyhound Track	Post Office Box 12824 Pensacola, Florida 32591	Yes	No
Sanford Orlando/Penn Sanford	301 Dog Track Road Longwood, Florida 32750	No	No

² *Deregulation of Intertrack and Simulcast Wagering at Florida's Pari-Mutuel Facilities*, Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.

³ Section 550.002(29), F.S.

Sarasota Kennel Club	5400 Bradenton Road Sarasota, Florida 34234	Yes	No
St. Johns Kennel Club (racing at Orange Park)	Post Office Box 959 Orange Park, Florida 32067	Yes	No
Tampa Greyhound Track (racing at Derby Lane)	Post Office Box 8096 Tampa, Florida 33674	Yes	No

Full Schedule of Live Racing

Section 550.002(11), F.S., defines what constitutes a full schedule of live racing. Each type of permit has a different requirement.

FULL SCHEDULE OF LIVE RACING OR GAMES	
Type of Facility	Full Schedule
Greyhound Racing	100 live evening or matinee performances
Jai Alai ⁴	100 live evening or matinee performances
Harness Racing	100 live regular wagering performances
Thoroughbred Racing	40 live regular wagering performances
Quarter horse Racing ⁵	20 live regular wagering performances

A live performance must consist of no fewer than eight races or games conducted live for a minimum of three performances each week at the permitholder’s facility.⁶

⁴ Generally a jai alai fronton must conduct 100 performances to constitute a full schedule of games. However, two exceptions exist. 1) For a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its facility has been less than \$4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of at least 40 live evening or matinee performances constitutes a full schedule of live games. 2) If the fronton operates slot machines in its facility, then the conduct of at least 150 performances constitutes a full schedule.

⁵ For year 2011-2012, a full schedule of live racing for a quarter horse facility will be 30 live regular wagering performances. For every year after 2012-2013, a full schedule of live racing for a quarter horse facility will be 40 live regular wagering performances. If the quarter horse facility leases another track, the conduct of 160 events (or 20 performances) will constitute a full schedule of live racing. However, any quarter horse facility running live at its own track may agree to an alternate schedule of 20 live performances if the permitholder and either the Quarter Horse Racing Association or the horsemen’s association representing the majority of the owners and trainers at the facility agree to the reduced racing schedule.

⁶ Section 550.002(11), F.S.

Intertrack Wagering

Wagers on live races at other tracks are divided into categories called intertrack and simulcast wagering under the Florida Statutes. Intertrack wagering is defined as “a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, in-state track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal re-broadcast from, another in-state pari-mutuel facility.”⁷ Simulcast wagering, on the other hand, is defined as “broadcasting events occurring live at an in-state location to an out-of-state location, or receiving at an in-state location events occurring live at an out-of-state location, by the transmittal, retransmittal, reception, and re-broadcast of television or radio signals by wire, cable, satellite, microwave, or other electrical or electronic means for receiving or re-broadcasting the events.”⁸

Intertrack and simulcast wagering transactions occur between guest and host tracks. The host track is defined as “a track or fronton conducting a live or simulcast race or game that is the subject of an intertrack wager.”⁹ A host track transmits signals to a guest track.

Simulcasting may only be accepted between facilities with the same class of pari-mutuel permits. For example, horseracing permitholders may only receive signals from other horseracing permitholders.

Simulcast and intertrack wagering have rules and regulations depending on the market area, which is the area within 25 miles of the track or fronton.¹⁰ For example, guest tracks within the market area of the operating permitholder must receive consent from the host track to receive the same class signal.¹¹ However, in general, in order for the track or fronton to participate in intertrack or simulcast wagering, the track or fronton must be licensed by the division and must have conducted a full schedule of live racing in the preceding year to receive broadcasts and accept wagers.¹²

Cardrooms

Pari-mutuel facilities within the state are allowed to operate poker cardrooms under s. 849.086, F.S. A cardroom may be operated only at the location specified on the cardroom license issued by the division and such location may be only where the permitholder is authorized to conduct pari-mutuel wagering activities subject to its pari-mutuel permit. Section 849.086(2)(c), F.S., defines “cardroom” to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations. Instead, such games are played in a non-banking matter, i.e. where the facility has no stake in the outcome. Such activity is regulated

⁷ Section 550.002(17), F.S.

⁸ Section 550.002(32), F.S.

⁹ Section 550.002(16), F.S.

¹⁰ Section 550.002(19), F.S.

¹¹ Section 550.615(4), F.S.

¹² Section 550.615(2), F.S.

by the department and must be approved by ordinance of the county commission where the pari-mutuel facility is located.

Section 849.086(2)(a), F.S., defines an “authorized game” at a cardroom as a game or series of games of poker which are played in a non-banking manner.¹³ Wagering may only be conducted using chips or tokens; the player’s cash must be converted by the cardroom before the player may participate in a game of poker.¹⁴ The cardroom operator may limit the amount wagered in any game.¹⁵

A cardroom may operate at the pari-mutuel facility for 18 hours per day on Monday through Friday and 24 hours on Saturday and Sunday and specified holidays.¹⁶ Cardrooms may not be operated beyond the hour limitations regardless of the number of permits located at a single facility.¹⁷

In order to renew a cardroom operator license, the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior to the initial application if the permitholder conducted a full schedule of live racing in the prior year. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior to the application. If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.¹⁸

Slot Machines

During the 2004 General Election, the electors approved Amendment 4 to the Florida 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. On January 29, 2008, another referendum was held under the provisions of Amendment 4, in which the slot machines in Miami-Dade County were approved. Under the provisions of the amendment, seven pari-mutuel facilities are eligible to conduct slot machine gaming. Of the seven, five are operating slot machines.¹⁹

¹³ A “banking game” is defined in s. 849.086(2)(b), F.S., as “a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers or in which the cardroom establishes a bank against which participants play.”

¹⁴ Section 849.086(8)(a), F.S.

¹⁵ Section 849.086(8)(b), F.S.

¹⁶ Section 849.086(7)(b), F.S.

¹⁷ Section 849.086(7)(a), F.S.

¹⁸ Section 849.086(5)(b), F.S.

¹⁹ The Isle at Pompano Park, Mardi Gras Gaming, Gulfstream Park, Calder/Tropical Park, and Flagler Dog Track and Magic City are currently operating slot machines.

In addition to the seven locations authorized for slot machines under the Florida Constitution, on July 1, 2010, a statutory amendment expanded the locations that were authorized slot machine gaming to include pari-mutuel facilities located in a charter county or a county that has a referendum approving slots that was approved by law or the Constitution, provided that such facility has conducted live racing for two calendar years preceding its application and complies with other requirements for slot machine licensure.²⁰ Currently, only existing pari-mutuel facilities in Miami-Dade County qualify for slot machine authorization. Under the statutory provision, one additional facility became eligible for slot machine gaming, Hialeah Park (a quarter horse facility).²¹ Hialeah Park has applied for a license to conduct slot machine gaming but is not currently operating slot machine gaming.

In order to conduct slot machine gaming, the slot machine applicant must conduct a full schedule of live racing the prior year.²² Slot machine licensees are required to pay a licensure fee of \$2.5 million for fiscal year 2010-2011. The annual slot machine licensure fee is reduced in fiscal year 2011-2012 to \$2 million.²³

In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.²⁴ If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee shall pay to the state within 45 days after the end of the state fiscal year a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year.²⁵

Purses

Section 550.09514, F.S., governs greyhound purse payments. Greyhound permitholders are required to pay a minimum purse payment plus a supplement payment of 75 percent of the daily license fees paid during the 1994-1995 fiscal year.²⁶

Greyhound permitholders who conduct at least three live performances during a week must pay purses on wagers it accepts as a guest track on intertrack and simulcast greyhound races at the

²⁰ See, ch. 2010-29, L.O.F. and s 551.102(4), F.S.

²¹ Currently the provision is being challenged as violating s. 23, Art. X, Florida Constitution. The trial court upheld the constitutionality in Leon County. That decision is on appeal to the First District Court of Appeal. See consolidated cases, *Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D11-130 (Fla. 1st DCA) and *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D10-6780 (Fla. 1st DCA).

²² Chapter 551.104(4)(c), F.S.

²³ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was \$3 million.

²⁴ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.

²⁵ Chapter 551.106(2), F.S. The 2008-2009 tax paid on slot machine revenue was \$103,895,349. It does not appear that this provision will be triggered because of the additional facilities beginning slot operations. Calder began slot operations in January 2010 and Flagler began operations in October 2009. Miami Jai Alai and Dania Jai Alai have not begun slot operations.

²⁶ Sections 550.09514(2)(a)-(b), F.S.

same rate it pays on live races. In addition, greyhound tracks pay one-third of any tax reduction on live and simulcast handle as purses.²⁷

The division requires adequate documentation to ensure that the purses paid by greyhound permitholders on live racing does not fall below the amount paid in the 1993-1994 fiscal year.²⁸ During each race week, the permitholder is required to have a weekly report available to show the division staff and kennel operators the amount of purses paid on live racing, simulcast, and intertrack wagering.²⁹

Each greyhound permitholder shall pay purse awards directly to the dog owners who have filed proper tax paperwork with the permitholder.³⁰

In addition to paying purses on pari-mutuel activity, each greyhound permitholder is also required to pay 4 percent of the cardroom's monthly gross receipts to supplement greyhound purses.³¹

Greyhound Taxes and Credits³²

Greyhound permitholders pay a tax on handle of 5.5 percent.³³ Each host greyhound track must also pay taxes on the greyhound broadcasts it sends to other tracks.³⁴ For the dog tracks located in three contiguous counties, the tax on handle for intertrack wagers is 3.9 percent.³⁵ However, each permitholder has a tax credit of \$360,000 and pays no tax on handle until that credit is utilized.³⁶ For the three greyhound permitholders that conducted a full schedule of live racing in 1995, and are closest to another state that authorizes greyhound pari-mutuel wagering, the maximum tax credit per state fiscal year is \$500,000.³⁷ Each permitholder, who cannot utilize the full tax exemption, may notify the division that the permitholder wishes to transfer their credits to another greyhound permitholder.³⁸ Each permitholder may only transfer credits once per year, and may only transfer credits to another greyhound permitholder who acted as a host track to the permitholder for intertrack wagering.

III. Effect of Proposed Changes:

The CS provides that there is no live racing requirement for greyhound permitholders. The CS extends the deadline for application for live racing to August 31, 2011, to give greyhound

²⁷ Section 550.09514(2)(e), F.S.

²⁸ Section 550.09514(2)(d), F.S.

²⁹ Section 550.09514(2)(f), F.S.

³⁰ Section 550.09514(2)(g), F.S.

³¹ Section 849.086(13)(d)1., F.S.

³² In fiscal year 2009-2010, greyhound tracks generated over \$290 million in total handle. The division collected over \$5 million in taxes and fees, over \$2.5 million of which was generated from live greyhound racing. Division of Pari-mutuel Wagering, 79th Annual Report, Fiscal Year 2009-2010.

³³ Section 550.0951(3)(b)1., F.S.

³⁴ Section 550.09514(2)(c), F.S.

³⁵ Section 550.0951(3)(c)2., F.S.

³⁶ See, s. 550.09514(1), F.S.

³⁷ *Id.* The three tracks that receive a \$500,000 credit are Jefferson County Kennel Club, Pensacola Greyhound Track, and Washington County Kennel Club (Ebro Greyhound Park).

³⁸ Section 550.0951(1)(b), F.S.

permitholders time to amend their applications and reduce or remove their live racing performances. The CS removes all references that require a live schedule of racing for greyhound racing permitholders.

The CS allows each greyhound permitholder to transfer unused tax credits at any time, rather than once per state fiscal year. The CS provides that the division shall disapprove of any credit transfer if the transferring permitholder did not conduct a minimum of 100 live performances of eight events in the fiscal year.

The CS deletes the provision that requires greyhound permitholders in a county where there are only two greyhound permitholders to pay an aggregate daily license fee tax equal to 75 percent of the daily license fees paid by such permitholders for the 1994-1995 fiscal year. Instead, all greyhound permitholders who conduct live racing must pay a daily license fee tax equal to 75 percent of the daily license fees paid by each permitholder for the 1994-1995 fiscal year.

The CS reduces the tax on handle for greyhound racing from 5.5 percent to 3.45 percent. For greyhound permitholders who do not conduct live racing during the fiscal year, 3 percent of the greyhound's intertrack handle shall be paid to the host greyhound permitholder for payment of purses at the host track. The CS increases the tax on handle from 0.5 percent to 3.45 percent for intertrack and simulcast handle if the guest track is located outside the market area and within the market area of a thoroughbred track conducting a live meet.

The CS deletes the provision that prohibited intertrack wagering without consent to be conducted in any county where there are only two permits, one for dogracing and one for jai alai, except during live racing.

The CS provides that greyhound facilities may conduct intertrack wagering even if they do not conduct live racing in the prior year.

The CS provides that greyhound facilities may conduct slot machine gaming, if authorized, regardless of whether the facility has conducted live racing.

The CS amends the requirements for a cardroom, and provides that a greyhound permitholder may operate a cardroom even if it did not run live racing, so long as the permitholder has conducted 10 years of live racing immediately preceding its application for a cardroom license or if the permitholder has converted its permit pursuant to s. 550.054(14), F.S. However, if no live racing occurs, no part of the cardroom receipts are required to be used to supplement purses.

Currently, there is one inactive greyhound permit in Key West, Florida. The inactive permit could, as a result of this CS, begin operations of intertrack wagering without opening a pari-mutuel track or conducting a single live race.³⁹ The track could not, however, open a cardroom.

³⁹ There are two greyhound permits operating at the Mardi Gras facility in Broward County. Under current law, one permit could reopen its facility back at the permitted location (in Miami-Dade County) and lease live racing back to the Mardi Gras facility. Under current law, the new facility could operate a cardroom and conduct intertrack wagering so long as live races occur either at the new facility or are continued to be leased back to the Mardi Gras facility. As a result of this bill, the new track would not be required to lease races or run any live races to operate a cardroom or intertrack wagering. However, it appears that in order for the track to be an "eligible facility" for the purpose of conducting slot machine gaming, the new

The CS provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined the impact of the tax rate reduction and offsetting increase in intertrack wagering to be a \$1.4 million reduction in cash and recurring General Revenue, and, beginning in FY 2012-13, a \$0.3 million recurring reduction in revenue to the Principal State School Trust Fund because of loss in escheated tickets.

B. Private Sector Impact:

If greyhound facilities choose not to run pari-mutuel events, the dogs that normally run at those tracks will likely be unable to run in other events. Dog breeders, owners, and trainers could potentially be out of business or experience a decrease in business as a result of less greyhound racing in the state.

Opponents of the legislation also note that a pari-mutuel permitholder that no longer runs live racing at the facility will solely be operating a cardroom, intertrack wagering, and, if authorized, a slot machine facility. At the present time, the operation of cardrooms and slot machine gaming is contingent on the facility satisfying minimum racing requirements. This CS removes those requirements for greyhounds and allows the facilities to cease all live racing.

C. Government Sector Impact:

The department's analysis indicates that it may need fewer personnel to inspect the greyhound tracks if live racing is reduced.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This CS deletes the live racing requirements for greyhound permitholders but the full schedule of live racing or performance requirements for horse racing and jai alai still exist.

Revenue sharing with the Seminole Indian Compact relies on continued exclusivity of casino style and Class III gaming. Games legal as of February 1, 2010 have no impact on payments from the Tribe. Pari-mutuel wagering activities have no impact on payments from the Tribe. Because this CS provides flexibility in the minimum number of live racing for greyhound permitholders and does not authorize any new facilities or new gaming in the state, this CS should have no impact on revenue sharing with the Tribe.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 16, 2011:

The CS provides that tax credits may not be utilized unless the greyhound permitholder has conducted at least 100 live performances of eight races. The CS clarifies that greyhound permitholders do not have to get permission for intertrack wagering from other greyhound tracks in their market area. The CS provides that in order to conduct a cardroom, the greyhound permitholder must have conducted 10 years of live racing prior to application.

- B. **Amendments:**

None.