

STORAGE NAME: h3723b.rs
DATE: March 30, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REGULATED SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3723
RELATING TO: Pari-Mutuel Wagering; Thoroughbred Horseracing
SPONSOR(S): Representative Bainter and Others
COMPANION BILL(S): SB 1476

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REGULATED SERVICES YEAS 10 NAYS 1
- (2) FINANCE & TAXATION
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill makes a variety of changes to the thoroughbred provisions of the pari-mutuel code. It removes a restriction which prohibits a thoroughbred permitholder from receiving and rebroadcasting out-of-state races after 10 p.m.; removes taxes on free admissions to a pari-mutuel facility; provides tax rates for live thoroughbred racing and for intertrack wagering on rebroadcasts of simulcast horse races; removes the authorization for a guest permitholder located in the market area of a thoroughbred permitholder which is required to make its simulcast signal available after 6 p.m. to accept ITW on such signal without the permission of the operating permitholder; places conditions on the receipt of rebroadcasts of thoroughbred simulcast signals; creates a cause of action for failure to make correct payments on a timely basis; maintains the purse payment levels currently in effect for South Florida thoroughbred permitholders; revises the conditions under which a stallion is eligible for stallion awards; provides for the continuation of Florida Owners' Awards; and repeals the existing thoroughbred tax structure, the division's authority to maintain a racing laboratory at a horse racetrack, the backside medical provisions, and the requirement that Calder make its live and simulcast signals available to Hialeah for intertrack wagering.

The bill has an estimated negative fiscal impact of \$193,789 for FY 1998-1999 and \$194,065 for FY 1999-2000.

Except as otherwise specified in the bill, the act is effective upon becoming a law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Prior to legislation passed during the 1996 legislative session (CS/HB 337), thoroughbred permitholders were prohibited from beginning a race after 7 p.m. With the passage of the 1996 legislation, thoroughbred permitholders were authorized to receive and rebroadcast out-of-state horseraces between the hours of 7 p.m. and 10 p.m. Thoroughbred permitholders which accept wagers on a simulcast signal received after 6 p.m. are required to make such signal available to any permitholder eligible to conduct intertrack wagering. Such guest permitholders are authorized to accept wagers on the rebroadcast signal, notwithstanding any other provision of the pari-mutuel code.

Pari-mutuel permitholders are required to annually file an application for a license to conduct performances during the next state fiscal year. The application, due between December 15 and January 4, is to specify the dates of operation, starting times of all performances the permitholder will conduct, which performances are charity or scholarship performances, and, if the permitholder operates a cardroom, the dates and hours of operation of that cardroom. Permitholders are allowed to amend their applications until February 28. The Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation (division) is directed to issue licenses by March 15. These provisions are codified in s. 550.01215, Florida Statutes.

Thoroughbred permitholders are subsequently provided different dates with regard to the issuance of licenses and amendment of applications pursuant to s. 550.5251, F.S. The division is directed to issue thoroughbred licenses on or before February 15 (rather than March 15) and a thoroughbred permitholder may amend its application until March 31 (rather than February 28).

The pari-mutuel tax code provides a tax on admissions to pari-mutuel facilities of 15 percent of the admission charge or ten cents, whichever is greater. Free or complimentary admissions are subject to a tax equal to the tax imposed on the regular and usual admission charge at the facility. Tax-free passes are available to officers, officials, and employees working at the track, accredited press people, and the officers and officials of other permitholders. Permitholders are required to file with the division a list of all persons to whom tax-free passes were issued.

Pari-mutuel taxes are provided by s. 550.0951, F.S. That section establishes a rate for live and intertrack thoroughbred racing of 3.3 percent of the handle. Over time, exceptions to the general tax provisions have been provided for the various segments of the pari-mutuel industry by creating tax provisions which are less than those provided by the general tax section. Such tax structure for thoroughbreds was established by ch. 93-123, Laws of Florida, and codified as s. 550.09515, F.S. Those tax provisions contained three tax periods for the South Florida thoroughbred permitholders, a tax penalty for operating in more than one tax period equal to the sum of the tax percentages for the periods in which a permitholder operates; and a lower tax rate for Tampa Bay Downs.

Three years later, the passage of Committee Substitute for House Bill 337 (Chapter 96-364, L.O.F.) provided additional reductions for thoroughbred permitholders operating in those three tax periods by reducing the tax rate for each of the periods; increased the penalty for operating in multiple tax periods; and maintained the reduced tax rate for

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Tampa Bay Downs. The 1996 amendments reduced the tax rate from 3 percent to 2.25 percent for the January 3 through March 16 period; from 1.15 to .7 percent for the March 17 through May 22 period; and from 2.4 to 1.5 percent for the May 23 through January 2 period. The tax penalty for operating in more than one tax period was increased from the sum of the tax percentages for the periods in which the permitholder operates to double the sum of those tax percentages.

The 1996 bill directed that the tax reductions which it provided would expire and that the changes it made would revert back to the law as it existed prior to the adoption of the legislation. One of the effects of the reversion is that thoroughbred tax rates would increase to the levels established by the 1993 legislation.

There exists some question regarding what will happen on July 1, 1998. The repeal of s. 550.09515, F.S., as envisioned by the 1993 legislation would have the effect of raising the thoroughbred tax rates to the level that existed prior to the 1993 bill. In that case, the tax rate would be 3.3 percent for all thoroughbred permitholders. It may be contended that the repeal of the section provided by the 1993 law is not superseded by the 1996 legislation.

However, it may also be argued that the amendments to that section in the course of an omnibus pari-mutuel bill such as CS/HB 337 constitutes a "review by the Legislature" as directed by the 1993 law and that the latest action of the Legislature prevails. The result would be that the three racing periods would be maintained along with the tax rates provided for those periods by the 1993 legislation. In such case, the tax structure would consist of three tax periods for the South Florida permitholders with differential tax rates higher than those currently in effect; a tax penalty for operating in more than one tax period equal to the sum of the tax percentages for the periods in which a permitholder operates; and the same tax rate for Tampa Bay Downs that is currently applicable.

If no action is taken by the Legislature prior to July 1, 1998, it is unclear which of these two tax mechanisms would govern the thoroughbred industry.

A portion of the tax reduction received by thoroughbred permitholders is required to be paid as additional purses. In the three periods, the additional purse rate is .375 percent, .225 percent, and .6 percent, respectively, pursuant to s. 550.2625(2), F.S. That section also provides for 8.5 percent of the purse account generated through intertrack wagering and interstate simulcasting to be used for Florida Owners' Awards.

One of the provisions of the omnibus 1996 pari-mutuel legislation allowed Hialeah to accept intertrack wagering from Calder and Tropical at a reduced tax rate. Section 550.615(11), F.S., provides that the South Florida thoroughbred permitholder operating during the May 23 through January 2 tax period must make the signal from its live pari-mutuel events and any simulcast signal received available to the South Florida thoroughbred permitholder operating in the March 17 through May 22 tax period. It further provides that the tax rate on such intertrack wagers is two percent rather than 3.3 percent for ITW or 2.4 percent for ITW of simulcast horseraces.

The law requires thoroughbred permitholders which accept wagers on simulcast signals to make rebroadcasts of such signals available to all eligible permitholders for intertrack wagering and, if the simulcast signal is received after 6 p.m., the thoroughbred permitholder is required to make that signal available to permitholders within its market

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area, as well. Such guest permitholders in the market area are authorized to accept wagers on such signal, notwithstanding any other provision of the pari-mutuel code to the contrary. As a condition of receiving such thoroughbred simulcast signals from Tampa Bay Downs, the guest permitholder must accept intertrack wagers on all live races conducted by that permitholder.

The owners of sires of thoroughbred horses winning stakes races are eligible for stallion awards only if the stallion is located permanently in this state or, if the stallion is dead, was located in this state for at least one year prior to its death. The removal of a stallion from the state renders the owners of that horse ineligible to receive a stallion award.

The division is authorized to lease or build a racing laboratory at the facility of a horse race permitholder. Such facility is to be most accessible to all horse racetrack permitholders.

Thoroughbred permitholders are required by law to withhold an amount equal to .18 percent of the purse pool to be paid to a corporation organized under chapter 617, F.S., and tax exempt under chapter 501(c), of the Internal Revenue Code. Funds paid to the corporation are to provide medical, dental, surgical, life, funeral, and disability insurance benefits to occupational licensees working at Florida's thoroughbred racetracks.

B. EFFECT OF PROPOSED CHANGES:

The bill makes a variety of changes in the thoroughbred provisions of the pari-mutuel code. Among the changes, it removes a restriction which prohibits a thoroughbred permitholder from receiving and rebroadcasting out-of-state races after 10 p.m. It removes admission taxes on free passes and complimentary cards given to a patron without charge and provides that no admission tax under this section or chapter 212, F.S., applies to such free admissions.

The bill provides tax rates for thoroughbred racing. It specifies that the tax on handle for all wagers placed on thoroughbred racing at the thoroughbred facility is 2.25 percent between January 3 and March 16; .7 percent between March 17 and May 22; 1.5 percent between May 23 and January 3; and provides a .5 percent tax rate for Tampa Bay Downs. The bill specifies that the tax on handle for intertrack wagering on rebroadcasts of simulcast horse races is 2.4 percent of the handle.

This bill removes the authorization for a guest permitholder located in the market area of a thoroughbred permitholder which is required to make its simulcast signal available after 6 p.m. to accept ITW on such signal without the permission of the operating permitholder. It places conditions on the receipt of rebroadcasts of thoroughbred simulcast signals by making the receipt of such signals subject to the provisions of 550.615(4), F.S. That subsection prohibits a permitholder from accepting intertrack wagers on the same class of race or game as is being conducted by a permitholder of the same type within a market area without written permission. The bill further requires that, as a condition of accepting such signal, a guest track must accept intertrack wagers on all live races being conducted by all thoroughbred permitholders which are conducting live races.

A cause of action is created for failure to make correct payments on a timely basis. If a guest track or a host track fails to make payments on wagers accepted at their

respective facilities, the nonpaying track is deemed to be in default. If the nondefaulting track is a host track, it would have the right to discontinue the transmission of signals and prohibit wagers on those signals. If it is a guest track, it would be entitled to recover interest on all delinquent payments at a prescribed rate. If action is taken against a defaulting track, the venues shall be in the county of the nondefaulting track.

Purse payment requirements are established for South Florida thoroughbred permitholders. The bill specifies that the minimum purse payment is 7.875 percent for the thoroughbred permitholders operating between January 1 and March 31; 7.95 percent for permitholders operating between April 1 and December 31; and maintains a 7.5 percent minimum purse payment for Tampa Bay Downs. This provision replaces the current purse payment structure which is tied to tax rate reductions for the three South Florida thoroughbred permitholders.

The bill addresses two breeders' issues. First, stallion awards are amended to allow a horse standing in the state between February 1 and July 1 of each year to be eligible for such awards. Such horse could be taken outside of the state under certain specified conditions and remain eligible for stallion awards. Second, the bill provides for the continuation of Florida Owners' Awards. These awards were created during the 1996 legislative session and were slated to expire on July 1, 1998. These awards are maintained in this bill by removing them from the scheduled repeal.

This bill repeals the existing thoroughbred tax structure; the division's authority to maintain a racing laboratory at a horse racetrack; the backside medical provisions; and the requirement that Calder make its live and simulcast signals available to Hialeah for intertrack wagering.

The bill makes cross references consistent with the changes provided by the bill.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

The bill removes the tax on free admissions to pari-mutuel facilities. It maintains the current, reduced differential tax rates for South Florida thoroughbred permitholders.

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill removes a provision which authorizes a guest permitholder located in the market area of a thoroughbred permitholder which is required to make its simulcast signal available after 6 p.m. to accept ITW on such signal without the permission of the operating permitholder and removes the requirement that Calder make its live and simulcast signals available to Hialeah for intertrack wagering.

It creates a cause of action for failure to make correct payments on a timely basis. If a guest track or a host track fails to make payments on wagers accepted at their respective facilities, the nonpaying track is deemed to be in default. If the nondefaulting track is a host track, it would have the right to discontinue the transmission of signals and prohibit wagers on those signals. If it is a guest track, it would be entitled to recover interest on all delinquent payments at a prescribed rate of 12 percent per annum. If action is taken against a defaulting track, the venues shall be in the county of the nondefaulting track.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 550.01215, 550.0951, 550.09515, 550.2625, 550.26352, 550.334, 550.3551, 550.5251, 550.615, 550.6305, and 550.655, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Allows a thoroughbred permitholder to receive and rebroadcast out-of-state races after 7 p.m. rather than between the hours of 7 p.m. and 10 p.m. Creates a cross reference to a later provision with regard to thoroughbred licenses. Amends s. 550.01215(1) & (5), F.S.

Section 2. Removes admission taxes on free passes and complimentary cards given to a patron without charge. Provides that no admission tax under this section or chapter 212, F.S., applies to such free admissions. Amends s. 550.0951(2), F.S.

Provides tax rates for thoroughbred racing. Specifies that the tax on handle for all wagers placed on thoroughbred racing at the thoroughbred facility is 2.25 percent between January 3 and March 16; .7 percent between March 17 and May 22; and 1.5 percent between May 23 and January 3. Provides a .5 percent tax rate for Tampa Bay Downs. Specifies that the tax on handle for intertrack wagering on rebroadcasts of simulcast horse races is 2.4 percent of the handle. Amends s. 550.0951(3)(c)1., F.S.

Section 3. Conforms to changes in section one of the bill regarding the removal of the 10 p.m. restriction on the receipt and rebroadcast of simulcast thoroughbred races. Creates a cross reference with regard to thoroughbred licenses consistent with that in section one of the bill. Amends s. 550.5251(4), F.S.

Section 4. Removes a provision which authorizes a guest permitholder located in the market area of a thoroughbred permitholder which is required to make its simulcast signal available after 6 p.m. to accept ITW on such signal without the permission of the operating permitholder.

Places conditions on the receipt of rebroadcasts of thoroughbred simulcast signals. Makes the receipt of such signals subject to the provisions of 550.615(4), F.S. That subsection prohibits a permitholder from accepting intertrack wagers on the same class of race or game as is being conducted by a permitholder of the same type within a market area without written permission. The bill further requires that, as a condition of accepting such signal, a guest track must accept intertrack wagers on all live races being conducted by all thoroughbred permitholders which are conducting live races. Amends s. 550.6305(9)(g), F.S.

Creates a cause of action for failure to make correct payments on a timely basis. If a guest track or a host track fails to make payments on wagers accepted at their respective facilities, the nonpaying track is deemed to be in default. If the nondefaulting track is a host track, it would have the right to discontinue the transmission of signals and prohibit wagers on those signals. If it is a guest track, it would be entitled to recover interest on all delinquent payments at a prescribed rate of 12 percent per annum. If action is taken against a defaulting track, the venues shall be in the county of the nondefaulting track. Creates s. 550.6305(12), F.S.

Section 5. Provides increased purse payment requirements for South Florida thoroughbred permitholders. Specifies that the minimum purse payment is 7.875 percent for the thoroughbred permitholders operating between January 1 and March 31 and 7.95 percent for permitholders operating between April 1 and December 31. Maintains a 7.5 percent minimum purse payment for Tampa Bay Downs. Amends s. 550.2625(2)(a), F.S.

The bill addresses stallion awards and would allow a horse standing in the state between February 1 and July 1 of each year to be eligible for such awards. Such horse could be taken outside of the state under certain specified conditions and remain eligible for stallion awards. Amends s. 550.2625(3)(d), F.S.

Section 6. The bill provides for the continuation of Florida Owners' Awards. These awards were created during the 1996 legislative session and were included in the provisions slated to expire on July 1, 1998. These awards are maintained in this bill by removing them from the scheduled repeal. Amends s. 550.2625(2)(e), F.S.

Section 7. Repeals the existing thoroughbred tax structure; the division's authority to maintain a racing laboratory at a horse racetrack; the backside medical provisions; and the requirement that Calder make its live and simulcast signals available to Hialeah for intertrack wagering. Repeals ss. 550.09515, 550.2425, 550.655, and 550.615(11), F.S.

Section 8. Corrects cross references consistent with the repeal of thoroughbred tax provisions in section seven of the bill. Amends s. 550.26352, F.S.

Section 9. Corrects a cross reference consistent with the repeal of thoroughbred tax provisions in section seven of the bill. Amends s. 550.334, F.S.

Section 10. Corrects cross references consistent with the repeal of thoroughbred tax provisions in section seven of the bill. Amends s. 550.3551, F.S.

Section 11. Effective date - Except as otherwise provided, the act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

The Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation estimates the following fiscal impacts on state revenues as a result of this legislation.

The division currently collects approximately \$1 million annually from the tax on pari-mutuel admissions. The fiscal impact of eliminating the tax on free admissions would depend on a permitholder's decision to provide free admissions to its patrons. The division assumes that ten percent of the patrons enter a facility without charge and that the fiscal impact under such assumption would be \$100,000 per year.

The elimination of the requirement for Calder and Tropical to send their signals to Hialeah pursuant to s. 550.615(11), F.S., would result in a \$452,554 negative annual impact to the state.

The division estimates that allowing thoroughbred permitholders to conduct simulcast and intertrack simulcast wagering after 10 p.m. would have a positive impact on state revenues of \$367,981 per year. The increased audit workload attributable to this additional wagering is estimated to increase OPS costs by \$9,216 for FY 1998-1999 and \$9,492 for FY 1999-2000.

The division warns in its fiscal analysis of this bill that reductions of tax collections would affect the Pari-Mutuel Wagering Trust Fund and would require that additional money be taken from General Revenue to pay for the required distribution of pari-mutuel revenues to the counties.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

The division's analysis projects a negative fiscal impact of \$193,789 for FY 1998-1999 and \$194,065 for FY 1999-2000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

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3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Regulated Services took up and amended the bill on March 18, 1998. The two amendments addressed purse issues at Tampa Bay Downs. The first reduced the tax rate on rebroadcasts of thoroughbred signals when Tampa Bay Downs is the guest track from 2.4 percent to .5 percent. The amendment requires that the host thoroughbred permitholder pay to Tampa Bay Downs an amount equal to 1.9 percent of the handle to be used for purses. The second amendment is conforming and includes such purse payments

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in the deductions for the calculation of "net proceeds" with regard to the distribution of such net proceeds between the guest track, the host track, and purses at the host track. The first amendment has an estimated negative fiscal impact to the state of \$235,877.

The bill was temporarily deferred after the adoption of those amendments. The bill again came before the committee and was again temporarily deferred on March 23. On March 30, 1998, the committee passed the bill favorably with 10 yeas, 1 nay.

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

Prepared by:

Legislative Research Director:

J Paul Whitfield Jr

Paul Liepshutz