

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1588

SPONSOR: Fiscal Resource Committee and Senator Horne

SUBJECT: Public Records

DATE: April 6, 2000

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The Committee Substitute creates s. 24.1075, F.S., which exempts any fee charged for access to winning lottery numbers and payout information by a 1-900 telephone service from the fee provisions of ch. 119. The bill provides for future legislative review and repeal and provides for retroactivity.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 24.1075.

**II. Present Situation:**

In November, 1986, voters approved a new Article X, Section 15 to the State Constitution, providing for a state operated lottery. The Department of the Lottery was created during the 1987 Regular Session and the state lottery officially began selling tickets on January 12, 1988. Total collections from the sale of lottery tickets are distributed as follows:

- 50 percent of the moneys for prizes
- at least 38 percent to the Education Enhancement Trust Fund; and
- the remaining funds to the Administrative Trust Fund of the Department of the Lottery

During the 1995 Regular Legislative Session, the Florida Legislature passed Senate Bill 2800, the 1995-96 Genreal Appropriations Act. Specific Appropriation 1893 contained proviso language which stated:

From the funds in Specific Appropriation 1893, the Department shall convert the current 1-800 telephone number to a 1-900 telephone number. The net revenue generated through the use of the 1-900 number shall be included in the revenue and transferred to the Educational Enhancement Trust Fund on a monthly basis. For the 1-900 service, the Department is authorized to operate the service internally, and if necessary based on call

rates, to invest in equipment and other resources necessary to augment and enhance the current system, or contract for the service.

Since 1995, approximately \$8 million in net revenues has been earned and transferred to the Educational Enhancement Trust Fund pursuant to the 1-900 service.

A class action complaint was filed in 1999, seeking damages against the state. The complaint alleges, in part, that the 1-900 number violates chapter 119, F.S., by charging more than the Lottery's actual cost for each telephone call. DeLuise vs. Department of the Lottery, et al., Second Judicial Circuit Case No. 99-3999. The complaint demands refunds for every person who has used the 1-900 service since its initiation in October 1995, as well as attorney's fees for the alleged violations of chapter 119, F.S. If granted, this would result in a refund of the \$8 million, plus attorneys' fees. The relevant sections of chapter 119 are as follows:

**119.085 Remote electronic access to public records.**--As an additional means of inspecting, examining, and copying public records of the executive branch, judicial branch, or any political subdivision of the state, public records custodians may provide access to the records by remote electronic means. Unless otherwise required by law, the custodian may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public shall be in accordance with the provisions of s. 119.07(1). The custodian shall provide safeguards to protect the contents of public records from unauthorized remote electronic access or alteration and to prevent the disclosure or modification of those portions of public records which by general or special law are exempt from s. 119.07(1).

**[1]119.07 Inspection, examination, and duplication of records; exemptions.--**

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. The custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law or, if a fee is not prescribed by law, for duplicated copies of not more than 14 inches by 8 1/2 inches, upon payment of not more than 15 cents per one-sided copy, and for all other copies, upon payment of the actual cost of duplication of the record. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. For purposes of this section, duplicated copies shall mean new copies produced by duplicating, as defined in s. 283.30. The phrase "actual cost of duplication" means the cost of the material and supplies used to duplicate the record, but it does not include the labor cost or overhead cost associated with such duplication. However, the charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication. Unless otherwise provided by law, the fees to be charged for duplication of public records shall be collected, deposited, and accounted for in the manner prescribed for other operating funds of the agency. An agency may charge up to \$1 per copy for a certified copy of a public record.

(b) If the nature or volume of public records requested to be inspected, examined, or copied pursuant to this subsection is such as to require extensive use of information

technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both. "Information technology resources" shall have the same meaning as in s. 282.303(13).

(Emphasis added).

**III. Effect of Proposed Changes:**

The bill creates s. 24.1075, F.S., which exempts any fee charged for access to winning lottery numbers and payout information by a 1-900 telephone service from the fee provisions of ch. 119. The bill provides that this exemption from the public records law is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment of the Legislature. The bill provides for severability.

The bill shall take effect upon becoming a law and shall apply to all authorized 1-900 services of the Department of the Lottery since October 1, 1995.

**IV. Constitutional Issues:**

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

**A. Tax/Fee Issues:**

The Department of the Lottery receives \$0.4751 per minute billed to the caller, net of all costs associated with providing the required 1-900 service. According to the Department of the Lottery, the following revenues have been collected on the 1-900 service since its inception in October, 1995:

Fiscal Year	Gross Revenue	Costs	Net Revenue
-------------	---------------	-------	-------------

1995-96	2,457,621	( 941,237)	1,516,384
1996-97	2,933,852	(1,123,627)	1,810,225
1997-98	2,908,429	(1,113,921)	1,794,508
1998-99	2,681,825	(1,021,378)	1,660,447
1999-00 (as of 3/22/00)	1,939,659	( 743,205)	1,196,454
<b>Total</b>	<b>\$12,921,385</b>	<b>(\$4,943,368)</b>	<b>\$7,978,018</b>

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of the Lottery is hoping that the provisions of CS/SB 1588 will clarify the original intent of the law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---