

STORAGE NAME: h0979.rs
DATE: February 22, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REGULATED SERVICES
ANALYSIS**

BILL #: HB 979
RELATING TO: Pari-Mutuel Consolidation Act
SPONSOR(S): Representative Andrews
TIED BILL(S): None

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

- (1) REGULATED SERVICES
 - (2) GOVERNMENTAL OPERATIONS
 - (3) FINANCE & TAXATION
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

This bill creates the "Pari-mutuel Consolidation Act of 2000" and allows one or more same-class pari-mutuel permitholders in the same market area to agree to conduct their live races or games at a single facility. Thereafter, the facility that ceases to offer live events would be allowed to take intertrack wagers [ITW] on pari-mutuel events, either at its original physical location or at a new ITW-only location in the same general geographical area. The ability to locate an ITW-only facility at a more favorable location than the existing pari-mutuel facility will reduce a permitholder's overhead and may..

In order for a pari-mutuel permitholder to be eligible to open an ITW-only facility, the lessee permitholder must have conducted a full schedule of live events in the previous year.

The bill limits the number of wagering locations to no more than the number which would be permissible if all valid permits were to operate live at separate facilities. Thus, if any of the several facilities which presently have two permits operating out of their facility elect to consolidate, they could then open an ITW-only facility, which would, in effect, increase the number of wagering "locations" which currently exist.

This fiscal impact of this legislation on state revenue collections is difficult to ascertain. Estimates from the Department of Business and Professional regulation range from an estimated negative impact of \$20,000 annually to an estimated negative impact of \$10,700,000 annually. The fiscal impact of the bill is primarily attributable to a provision of the bill providing that a lessee who consolidates with another lessor permitholder shall pay taxes on handle at a rate no higher than the lessor. That provision could have the effect of lowering some tax rates on thoroughbred handle if certain thoroughbred consolidations were to occur.

The bill provides that the act will take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 2. Lower Taxes Yes No N/A
- 3. Individual Freedom Yes No N/A
- 4. Personal Responsibility Yes No N/A
- 5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 550, Florida Statutes, contains Florida's laws governing the regulation and taxation of pari-mutuel wagering activities in the state. The Division of Pari-Mutuel Wagering [division] of the Department of Business and Professional Regulation, is the state agency with general regulatory authority over these activities.

Over the last decade there has been a steady decline in attendance, wagering handle, and tax collections for pari-mutuel wagering activities. Total state revenue collections from all pari-mutuel operations decreased from \$118,466,567 in FY 1988-89 to \$62,934,837 for FY 1998-99. The November 1999 Revenue Estimating Conference estimates total state revenue collections will continue to decline. In recent years, numerous amendments to the pari-mutuel statutes have been adopted in efforts to mitigate the impact of this decline.

Section 550.054, Florida Statutes, establishes the application process for receiving a pari-mutuel wagering permit. Pari-mutuel wagering may not be conducted, however, until such time as a referendum on the subject is ratified or rejected by the voters in the county where the facility would be located. [See s. 550.0651, F.S.] Annual operating licenses are issued to permitholders for the location specified in the permit.

Consolidation of Pari-Mutuel Operations

Present law [s. 550.475, F.S.] allows greyhound, thoroughbred and standardbred permitholders to lease their facilities to like-kind permitholders, located within a 35 mile radius. Thoroughbred and standardbred facilities, while both are horse tracks, are not considered like-kind facilities. The permitholder leasing the facility is authorized to conduct its race meet [live, simulcast and intertrack] at the leased facility. This statute does not appear to authorize the permitholder leasing another's facility to send its ITW signal back to the permitholder's original facility.

Intertrack Wagering

The ability to conduct intertrack wagering is generally conditioned upon a permitholder's operation of a full schedule of live events in the previous year with specific conditions placed on each class of permitholder and, often, with specific conditions placed on permitholders within a class. Current law, s. 550.6308, F.S., allows a permanent

thoroughbred sales facility, Ocala Breeders' Sales, to conduct intertrack wagering under certain conditions without the necessity of also operating a live race meet. This is the only off-site wagering facility authorized by law.

Section 550.002, Florida Statutes, defines intertrack wagering as "...wagers ... on a race or game transmitted from and performed live at, or simulcast signal rebroadcast from, another in-state pari-mutuel facility." A guest track is defined as "...a track or fronton receiving or accepting an intertrack wager." Sections ss. 550.3551 [transmission of racing and jai alai information; commingling of pari-mutuel pools], 550.615 [intertrack wagering], 550.625 [purses], and 550.6305 [ITW guest track payments] deal expressly with specific components of intertrack wagering.

Cardrooms

Legislation enacted in 1996, s. 849.086, F.S., authorizes the operation of commercial "cardrooms" by persons holding a valid and active pari-mutuel permit. Cardrooms may only be operated at the same facility at which a permitholder is authorized to conduct pari-mutuel wagering. The statute establishes operational guidelines for cardrooms, as well as a taxation and licensing process.

In order for a cardroom license to be renewed, the applicant must have requested, as part of its annual pari-mutuel license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during the fiscal year in which the initial cardroom license was issued or the fiscal year immediately prior thereto. The annual cardroom license fee is \$1,000 for the first table and \$500 for each additional table to be operated at each facility.

Alcoholic Beverage Sales at Pari-Mutuel Facilities

Section 565.02(5), F.S., authorizes a caterer at a pari-mutuel facility to obtain an alcoholic beverage license which allows the caterer to sell alcoholic beverages for on-premises consumption at the facility. Package sales of alcoholic beverages are not allowed under the conditions of this license. The caterer is allowed to sell alcoholic beverages during the period 10 days before pari-mutuel wagering events begin and ending 10 days after pari-mutuel wagering events are concluded.

C. EFFECT OF PROPOSED CHANGES:

This bill creates the "Pari-Mutuel Consolidation Act of 2000" and provides that it is the legislative intent to allow the industry to "participate in emerging technology and to consolidate live operations in overlapping market areas in order to better utilize and maintain facilities through economies of scale." The ability for a permitholder to merge live operations, close their existing facility, and conduct ITW at a smaller, perhaps more visible and convenient location, will reduce the permitholder's operating overhead considerably. In addition, it is possible that intertrack wagering activity will increase at the new ITW-only location due to a number of variables, e.g., convenience, ambiance, location, traffic.

Consolidation of Pari-Mutuel Operations

This bill allows two same-class permitholders in overlapping market areas to consolidate live operations by mutual agreement, with one permitholder leasing the other permitholder's facility for the operation of its entire live meet.

After consolidation, if the lessee permitholder has conducted a full schedule of live racing during the preceding year, the lessee permitholder may conduct intertrack wagering [ITW] at either the consolidated facility **or** at a separate ITW-only facility. [See V. Comments] The ITW-only facility may not operate within the market area of another same-class permitholder during that permitholder's live meet unless the ITW-only permitholder obtains written consent. Section 550.002(19), F.S., defines "market area" as an area within 25 miles of a permitholder's track or fronton. The statutes, however, provide additional mileage restrictions for specific situations.

The bill applies the provisions of this section to all consolidation operations, regardless of the date of consolidation. Therefore, in addition to prospective consolidated operations, these provisions allow those permitholders who are presently operating under more than one permit at a single facility to operate ITW-only facilities, e.g., Calder/Tropical, Dania Jai Alai/Summersport, etc.

Additionally, the bill allows two or more permitholders to form a business entity to operate one or more ITW-only facilities. Under this provision, for example, it appears that the jai alai permitholders operating in Broward and Dade Counties who presently operate two permits out of each facility, could further consolidate into one facility and operate three ITW-only facilities. That provision also prohibits anyone other than a pari-mutuel entity from owning, directly or indirectly, any interest in an ITW-only facility.

The bill limits the number of wagering locations/facilities to no more than the number which would be permissible if all valid permits were to operate live at separate facilities. The number of permitholders will, therefore, not increase; however, the actual number of wagering locations/facilities which currently exist may increase.

The bill provides that a permitholder who has consolidated and is conducting its live performances at another permitholder's facility shall not pay taxes on live or intertrack handle at a rate which is higher than any other permitholder operating at the same consolidated facility. It appears that the potential for a reduced rate provided by this language may only be available to the "lessee" permitholder. [See V. Comments]

The definition for an "intertrack facility" as provided in this legislation means a "facility used to conduct intertrack wagering as defined in s. 550.002(17), Florida Statutes," and is also considered a guest track as defined in s. 550.002, Florida Statutes. ITW-only facilities may conduct intertrack wagering at any time on the same class of races or games as their permitholder and on any other event the permitholder would be able to accept intertrack wagering if they were operating live from the ITW-only facility. A wager at an ITW-only facility constitutes an intertrack wager as defined in ss. 550.002.

The bill specifies that, except as otherwise provided in the bill, the ITW-only facilities are subject to the provisions of ss. 550.3551 [transmission of racing and jai alai information; commingling of pari-mutuel pools], 550.615 [intertrack wagering], 550.625 [purses], and 550.6305 [ITW guest track payments].

Cardrooms

The bill amends s. 849.086(5) to specify that if more than one permitholder is operating at one facility, each of them must have applied for a license to conduct a full schedule of live racing in order to receive a cardroom license. Consolidated facilities presently are required to pay table and license fees for each permit operating at a single facility. Paragraph (d),

however, is amended in this bill to apply the annual cardroom license fee to each facility, rather than each permitholder operating at a facility.

Alcoholic Beverage Sales at Pari-Mutuel Facilities

Finally, the bill provides that the provisions of s. 565.02, Florida Statutes, shall also apply to each ITW-only facility. Section 565.02(5), Florida Statutes, authorizes the issuance of an alcoholic beverage license to caterers at pari-mutuel facilities. An alcoholic beverage license issued under the provisions of this section presumedly allows the sale of alcoholic beverages not only at any time the ITW-only facility is operating but also, for those facilities which will not operate year-round, beginning 10 days prior to operation and for 10 days following the conclusion of its operation. Caterers are authorized to sell alcoholic beverages for consumption on the licensed premises only.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 550.654, F.S., the "Pari-Mutuel Consolidation Act of 2000"

Subsection (2) provides legislative intent to allow the industry to "participate in emerging technology and to consolidate live operations in overlapping market areas in order to better utilize and maintain facilities through economies of scale."

Subsection (3) allows two same-class permitholders in overlapping market areas to consolidate live operations by mutual agreement, with one leasing the other permitholder's facility for the operation of its entire live meet.

Subsection (4) requires the lessee permitholder to have conducted a full schedule of live racing or games during the preceding year in order to operate an ITW-only facility. This subsection also allows the lessee to conduct ITW at either the consolidated facility or at a separate intertrack facility within its original market area. The ITW facility may not operate within the market area of another same-class permitholder during that permitholder's live meet unless it obtains their written consent.

Subsection (5) limits the number of wagering locations to no more than the number which would be permissible if all permitholders were to conduct live performances at their own facility.

Subsection (6) defines "intertrack facility" and provides that an ITW-only facility may conduct intertrack wagering, as defined in s. 550.002(17), at any time on the same class of races or games as their permitholder and on pari-mutuel events on which the permitholder would be able to accept ITW if they were conducting live operations at their intertrack facility. These ITW-only facilities are considered guest tracks as defined in s. 550.002 and wagers at the ITW-only facilities constitute an intertrack wager.

This subsection provides that, except as otherwise provided in this legislation, the provisions of ss. 550.3551, 550.615, 550.625 and 550.6305 apply to the ITW-only facilities.

Further, this subsection specifies that the provisions of s. 565.02, F.S., which authorize a caterer at a pari-mutuel facility to receive an alcoholic beverage license, apply to each ITW-only facility.

Subsection (7) provides that participating consolidation permitholders may form a business entity to operate one or more ITW facilities. The number of live and ITW facilities may not

exceed the number of pari-mutuel facilities that could exist if all the permitholders were operating live at their own facilities. This subsection prohibits anyone other than a pari-mutuel entity from owning, directly or indirectly, any interest in an ITW facility.

Subsection (8) provides that a permitholder who has consolidated and is conducting its live performances at another permitholder's facility shall not pay taxes on live or intertrack handle at a rate which is higher than any other permitholder operating at the same consolidated facility.

Subsection (9) applies the provisions of this section to all consolidated operations, including those already in existence.

Subsection (10) allows permitholders to "deconsolidate" and begin live operations at another location.

Section 2. Amends s. 849.086(5)(b) and (d), Florida Statutes

Paragraph (b) is amended to clarify that if more than one permitholder is operating at one facility, each of the permitholders must have applied for a license to conduct a full schedule of live racing in order to receive a cardroom license.

Paragraph (d) is amended to specify that the annual cardroom license fees applies to each facility, rather than each permitholder operating at a facility.

Section 3. The bill takes effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides that the annual cardroom license fees apply to each facility rather than each permitholder, thus reducing license and table fee revenue at the existing consolidated operations. Currently there are several permitholders that operate a cardroom at the same facility during different periods of the year. The Division of Pari-Mutuel Wagering estimates the potential negative impact to revenue collections from this provision of the bill to be approximately \$20,000 to \$30,000.

Since greyhound permitholders pay a uniform tax rate and jai alai permitholders pay little tax, due to the availability of tax credits, the major impact from a consolidation of operations would be due to the consolidation of thoroughbred operations. According to Division estimates, if all eligible South Florida thoroughbred permitholders consolidated live operations, the potential negative impact to tax revenue would be approximately \$10.5 million annually. This figure represents the most severe impact and does not appear to be a likely possibility.

2. Expenditures:

This legislation is anticipated to have an insignificant impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Participating pari-mutuel permitholders will benefit due to the decreased costs associated with operating an ITW-only wagering facility versus the significant costs associated with operating and maintaining a facility where live races or games occur. Further, the permitholder will then be able to sell the previously operated pari-mutuel facility or convert it to a more profitable use.

D. FISCAL COMMENTS:

Tax rates for some pari-mutuel permitholders may be reduced due to their consolidation of operations, thus further reducing tax collections to the state. It is possible, however, that tax collections due to intertrack wagering could increase due to the more favorable wagering locations afforded by this legislation. The extent to which these revenue collections may be diminished or increased are not, in our opinion, determinable.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

No rule-making authority is provided in this legislation.

C. OTHER COMMENTS:

A number of areas in this proposed legislation are subject to differing interpretations. Committee members may, therefore, wish to clarify the legislative intent with regard to those interpretations. The following comments represent some of the areas which may be open to debate.

- ▶ Based on the plain language of the proposed subsection (8), it appears that the potential for a reduced rate is only available to the “lessee” permitholder. For example, if Hialeah and Gulfstream consolidate operations at Hialeah, it appears that Gulfstream’s tax rate would drop to .20%. However, if Hialeah consolidates at the Gulfstream facility it does not appear that either tax rate will be impacted. If, for example, Hialeah and Calder/Tropical were to consolidate at Gulfstream, the lessees, Calder/Tropical, rates would drop to the Hialeah .20% rate but Gulfstream would stay at its present rate. This language may be subject to differing interpretations.
- ▶ The bill, on page 2, line 9, provides that the lessee permitholder can conduct intertrack wagering at either the consolidated facility or an ITW-only facility. It is unclear whether this provision allows ITW to be conducted at only one or at both of the facilities. The committee may want to consider a clarifying amendment.
- ▶ The ITW-only facility is required to be within the lessee permitholder’s original 25-mile market area [Subsection (4)]. While this provision limits the siting of the new ITW-only facility to within a 25-mile radius of the existing facility, it would appear to allow the siting to cross county lines, potentially entering a county which has not voted to allow pari-mutuel wagering activities to occur or a county which had at one time allowed pari-mutuel wagering but which has revoked that authority.
- ▶ Subsection (3) on page 1, refers to “any two permitholders” -- subsection (7) allows “two or more permitholders” to form a business entity to operate one or more ITW-only facilities. The committee may wish to consider a clarifying amendment to resolve any potential conflict between these two provisions.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

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