

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1920

SPONSOR: Regulated Industries Committee and Senator Diaz de la Portilla

SUBJECT: Video Lotteries

DATE: March 25, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
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 the Lottery. There are currently 31 active pari-mutuel permitholders at 27 facilities, all of whom would be eligible for licensure of video lottery terminals.

This bill substantially amends the following sections of the Florida Statutes: 24.103, 24.105, and 212.02. It also 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, and 24.135.

II. Present Situation:

Article X, section 7 of the Florida 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. However, these machines do exist on "Cruises to Nowhere" and on Indian reservations. The machines on Indian reservations are currently unauthorized by law and are untaxed and unregulated. 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.

Indian Gambling

In order for tribes to be authorized to conduct casino games or video lottery terminals (referred as Class III gaming), federal law requires that the parties first reach an agreement or compact on how the gaming would be conducted. Indians are permitted to operate casino gaming, only if the state in which the tribe is located permits such gaming for any purpose by anyone in the state. By permitting video lotteries in Florida, this bill allows the Indians to negotiate a compact with the state to use video lottery terminals.

The Seminole Indian tribe tried to negotiate a gaming compact with the state and, when the tribe felt the state was not negotiating in good faith, filed suit in federal court. The tribe won in the federal district court but lost in the U.S. Court of Appeal for the Eleventh Circuit. *Seminole Tribe of Florida v. State of Florida, Poarch Creek Indians v. Alabama*, 11 F.3d 1016 (1994) While the appeals court upheld a state's sovereign immunity against suits, it also said a tribe could appeal to the Secretary of the Interior if the immunity defense prevented a tribe from negotiating a compact with a state. The U.S. Supreme Court, which rendered its opinion in March, 1996 and said that an Indian tribe could not sue a state in Federal court for an alleged failure of the state to negotiate a compact in good faith, i.e., the court found the state immune from suit under the 11th Amendment to the U.S. Constitution.

In April, 1999, regulations were promulgated by the Department of Interior that would allow the licensing of Indian Class III gaming without the state's consent. Florida's Attorney General challenged the Secretary's authority for promulgating such regulations in Florida's Northern District Federal Court. The case is being held in abeyance until such time as the Department of Interior is actually poised to license a Florida tribe to engage in Class III gaming pursuant to the new regulations.

III. Effect of Proposed Changes:

Video Lotteries in Florida

The bill grants overall control of the video lottery terminals to the Department of the Lottery and provides a start date of October 1, 2003, 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.

The video lottery games can only be offered at the pari-mutuel facilities in which the retailer has conducted a full schedule of live racing or games in the prior year or is authorized to receive broadcasts of horse races under s. 550.6308, F.S.

Terminals, Games, Vendors and Retailers Defined

Video lottery terminals (VLT's) are defined as a machine or device on which a video lottery game is played. Video lottery games include line-up games, traditional card games, poker, and progressive games where the jackpot grows and accumulates. The video lottery terminal vendors

are licensed by the department and are in the business of selling, leasing, servicing, repairing, or upgrading video lottery terminals for video lottery retailers. Video lottery retailers are defined as pari-mutuel permitholders licensed under chapter 550 who conducted a full schedule of live races or games between July 1, 2000 and June 30, 2001 or who are authorized to receive broadcasts of horse races under s. 550.6308, F.S. According to the Department of Business and Professional Regulation, there are 31 active permitholders operating at 27 different facilities.

The bill requires that the Department of the Lottery must approve retailer licensure applications within thirty days. However, this should be a simple process since the bill provides that any person who holds a pari-mutuel permit that has been licensed pursuant to chapter s. 550 F.S. and meets the criteria provided in the definition of video lottery retailer, shall be deemed to have met all the qualifications for a retailer.

Operation of Video Lottery

The bill provides for emergency rulemaking regarding the regulation of retailers, products, and vendors and specifications for video lottery terminals. It also provides that the video lottery games may not be played by persons less than 18 years of age and requires that signage be posted in the pari-mutuel facilities to ensure the age requirement is enforced.

The video lottery retailer determines on the number of VLT's and where they are to be placed in the facility, the dates and hours for play, the mix of games that will be played, the minimum and maximum betting amounts and the payouts. Payouts must be within the range of 88 percent and 95 percent of the amount of value placed in the video lottery terminal. The department has sole discretion to permit the retailer to exceed 95 percent if the retailer's total annual payout does not exceed 95 percent.

Income Distribution

Income derived from video lottery operations must be distributed as follows:

1. Forty-two percent of the net terminal income is deposited in the Video Lottery Administrative Trust Fund for transfer to the Education Enhancement Trust Fund.
2. In addition, .75 percent to the Video Lottery Administrative Trust Fund for transfer to the Administrative Trust Fund. Twenty-five percent of the .75 percent goes to the Department of Children and Families with a cap not to exceed \$5 million dollars annually for the compulsive gambling program.
3. The retailer will receive 57.25 percent of the net terminal income as compensation and will be distributed partially as follows:
 - a. 4.25 percent of the net terminal income goes as purses (purses are the cash portions of the prize for which a race or game is contested) for live performances conducted as a part of the retailer's pari-mutuel meet under ch. 550, F.S. However, if the retailer holds a license for intertrack wagering, then 4.25 percent is distributed as Florida Thoroughbred Breeders and stallion awards and awards to owners of registered Florida-bred thoroughbred horses.
 - b. 4 percent of the net terminal income is deposited in the Video Lottery Purse Trust Fund to be distributed for purses as follows:

- i. 58 percent to holders of valid thoroughbred racing permits
- ii. 8 percent to holders of valid harness racing permits
- iii. 7 percent to holders of valid jai alai permits
- iv. 27 percent to holders of valid greyhound racing permits :

Licensure of Video Lottery Terminal Vendors

Vendors shall be licensed by the department by July 1, 2003 and emergency rule authority is given to expedite the process.

Local zoning of pari-mutuel facilities

The bill provides that having video lottery terminals in pari-mutuel facilities will not change the character of the pari-mutuel facility for local zoning purposes.

Video lottery terminal training program

The bill provides 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.

Compulsive Gambling Program

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.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or cities to spend funds or take an action requiring the expenditure of funds; does not reduce the authority that cities or counties have to raise revenues in the aggregate; and does not reduce the percentage of a state tax shared with cities or counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill provides for two additional trust funds for disbursement of funds generated from the video lottery terminals that are created by separate legislation.

IV. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

The bill requires that 42 percent of the income from the operation of Video Lottery Terminals shall be deposited in the Education Enhancement Trust Fund.

B. Private Sector Impact:

The pari-mutuel permitholders authorized to conduct video lottery will receive income from operation of the terminals.

C. Government Sector Impact:

According to a February, 2002, report by the Washington Economics Group, Inc. a conservative estimate of the potential fiscal and economic impact of limited electronic gaming in Florida is \$1.5 billion dollars in additional revenue to the state. This estimate is based on the state receiving 42 percent of the projected win from video lottery terminals. The revenue impact conference has not estimated the impact of the provisions of this bill. According to the latest statistics from Le Fleur's Fiscal 2002 VLT Special Report, as of June 30, 2002, seven states, Delaware, Louisiana, Montana, Oregon, Rhode Island, Delaware, South Dakota and West Virginia, currently authorize video lotteries. For FY 2001-02, these states realized government income from video lottery operation in the amount of \$200.2 M, \$155.9 M, \$43.7 M, \$279.6 M, \$148.9 M, \$103.6 M, and \$240.6 M respectively.

The Department of Lottery is required to conduct a background investigation for video lottery terminal service employees before the employee can become certified.

V. Technical Deficiencies:

None.

VI. Related Issues:

The Department of the Lottery maintains that they will not have the capacity to support video lottery games at facilities of video lottery retailers by October 1, 2003 due to the time necessary to issue the request for proposals, evaluate the proposals, and award the contract to the vendors.

VII. Amendments:

None.