

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 663 Video Lotteries  
**SPONSOR(S):** Greenstein  
**TIED BILLS:** HB 683, HB 685, HB 687 **IDEN./SIM. BILLS:** (I) SB 64

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Gaming & Pari-Mutuels (Sub)		Morris	Liepshutz
2) Business Regulation			
3) State Administration			
4) Finance & Tax			
5) Commerce & Local Affairs Appropriations			
6) Appropriations			

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### SUMMARY ANALYSIS

The Florida Constitution prohibits lotteries except for state-operated lotteries and authorized pari-mutuel pools. General prohibitions and limited exceptions on gambling are provided in the Constitution and general law, e.g., bingo, charitable drawings, penny ante games, and cardrooms.

This bill authorizes the establishment and operation by the Department of the Lottery of video lottery terminals [VLT's] at licensed pari-mutuel facilities. It appears that all 31 active pari-mutuel permit holders, and the single limited intertrack wagering license, Ocala Breeders Sale, would qualify under the definition of Video Lottery Retailer as proposed by this legislation. A provision is also included in this legislation that allows Hialeah Race Park to operate video lotteries if it maintains its permit and license and conducts a full schedule of live racing.

As of the date of publication of this analysis no official estimate of fiscal impact had been completed with regard to this legislation. A February 2002 Justification Review of the Department of the Lottery, by the Legislature's Office of Program Policy Analysis and Government Accountability [OPPAGA] estimated potential recurring transfers to education ranging from \$641 Million to \$1 Billion annually if video lotteries were authorized at pari-mutuel facilities in the state.

Companion/tied measures creating the Video Lottery Administrative Trust Fund, the Video Lottery Purse Trust Fund and the Video Lottery Thoroughbred Trust Fund are integral to the operation of this legislation and will need to be enacted if this legislation becomes law.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0663.br.doc  
**DATE:** March 8, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

#### B. EFFECT OF PROPOSED CHANGES:

##### Lotteries in Florida

Section 7 of Article X of the Florida Constitution prohibits lotteries except for authorized pari-mutuel pools and Section 15, Article X of the Florida Constitution allows the operation of a state-operated lottery. The Florida Lottery was established by the Legislature in 1987 and codified as Chapter 24, Florida Statutes.

Video lottery [VLT's] or electronic slot machines, are interactive gaming devices offering a variety of game options [traditional line-up games such as three cherries in a row, bingo, keno, traditional card games such as black jack and poker, etc.] at which a player places a bet for a chance to be awarded credits that can either be redeemed for cash or be replayed as additional bets. VLT's are not presently legal in Florida and are the subject of on-going litigation between the state and the Indian nations.

According to the latest statistics available to staff, eight states<sup>1</sup>, Louisiana, Oregon, Montana, Rhode Island, Delaware, South Dakota and West Virginia, currently authorize video lotteries at pari-mutuel facilities. For FY 2001-02, these states realized government profits from video lottery operations in the amount of \$155.9 M; \$279.6 M; \$43.7 M; \$149.0 M; \$200.2 M; \$103.7 M; and \$254.1 M respectively.<sup>2</sup>

##### Qualification

Under the provisions of this legislation, to qualify as a "video lottery retailer" a pari-mutuel facility must have possessed a pari-mutuel permit on or before July 1, 2002, and have conducted a full schedule of live jai alai games or live greyhound, horse, or harness racing or, be authorized to conduct intertrack wagering on horseraces. It appears that all 31 active pari-mutuel permitholders, and the single limited intertrack wagering license, Ocala Breeders Sale, would qualify under the definition of Video Lottery Retailer in the proposed bill. A provision is also included in this legislation that allows Hialeah Race Park to operate video lotteries if it maintains its permit and license and conducts a full schedule of live racing.

Quarter horse permitholders are not included within this definition of Video Lottery Retailer.

##### Operation

The bill grants overall control of the video lottery system to the Department of the Lottery and also requires each terminal to be linked, directly or indirectly, to a computer system under the control of the department. The department is authorized to issue licenses; collect and disperse revenue; certify net

<sup>1</sup> Although authorized by statute in the State of New York, video lotteries are not yet operational at pari-mutuel facilities in New York.

<sup>2</sup> *LaFleur's Fiscal 2002 VLT Special Report*

terminal income by inspecting records, conducting audits, or other means; approve vendors and maintain a current list of all contracts between vendors and retailers; require bonds from video lottery retailers; and adopt rules concerning the regulation of video lottery retailers and products; specifications for video lottery terminals in order to maintain the integrity of the games and terminals; method by which cash receipts will be electronically validated and redeemed; and the licensure and regulation of VLT vendors. The department may not provide specifications that will result in reducing the number of video lottery terminal vendor suppliers to fewer than four and the department may not approve as a video lottery terminal vendor any person who has an interest in a video lottery retailer.

The bill describes video lottery games to include an electronically simulated game involving any element of chance; an electronically simulated game involving elements of chance and skill; and, progressive games where a jackpot grows and accumulates as it is played on a video terminal or on a network of video terminals which are linked by a central network. The bill requires VLT games to pay out a minimum of 88 percent and no more than 99 percent of the amount wagered by the bettor. A video lottery terminal, using spinning reels or video displays, or both, is played upon insertion of cash, tokens, credits or vouchers. There is no prohibition concerning the dispensing of coins or cash. The bill amends s. 212.02(24), F.S., to specify that the definition for "coin-operated amusement machine" does not include a video lottery terminal as contemplated in this legislation.

To encourage pari-mutuel play, the bill requires video monitors displaying the live races or games and some or all simulcasts of the facility, to be displayed in locations where video lottery gaming is conducted. The bill requires the video lottery retailer to provide a means by which patrons may wager on those pari-mutuel activities. Video lottery games may be played at an authorized video lottery retailer's pari-mutuel facility even if the retailer is not conducting a pari-mutuel event and there is no restriction on the number of days or hours of operation.

The department is authorized to impose an administrative fine not to exceed \$5,000 per terminal, per day against any retailer who fails to suspend its operation when ordered to do so by the department.

### **Security**

The bill requires each video lottery terminal to be linked, directly or indirectly, to a computer system under the control of the Lottery Department for the purpose of auditing the operation, financial data and program information. The bill also requires VLT's to be protected against manipulation to affect the probability of winning or obtaining credits and to be capable of suspending play, as a result of tampering, until reset at the direction of the department. The bill creates a third degree felony for physical or electronic tampering with a video lottery terminal.

Video lottery terminal vendors [suppliers of the terminals] are required to submit a training program for the service and maintenance of terminals and equipment for approval by the department. The bill specifies training program, qualification and certification criteria, including background investigations for employees, provides for revocation of certification and authorizes the department to adopt rules to further that purpose. No person can be licensed as a video lottery terminal vendor if the person has an interest in a video lottery retailer [pari-mutuel permitholder] or a business relationship with a video lottery retailer other than as a vendor or lessor of terminals.

### **Age Restrictions**

No person under the age of 18 is allowed to play video lottery games, as authorized by this legislation, and video lottery retailers are required to post signs on each terminal which reiterates that prohibition. The bill creates a second degree misdemeanor for violations of these prohibitions.

## Zoning

The bill preempts any newly enacted local ordinance from prohibiting the operation of video lotteries at a pari-mutuel facility by providing that the installation, operation or use of a video lottery terminal on any property where pari-mutuel operations were or would have been lawful under a county or municipal zoning ordinance as of July 1, 1997, does not change the character or use of the property.

## Compulsive Gambling

The bill appropriates  $\frac{1}{4}$  of 1 percent of a video lottery retailer's net terminal income to the Department of Children and Family Services and requires the Alcohol, Drug Abuse and Mental Health Program Office to establish a program for public education, awareness and training, for the treatment and prevention of problem or compulsive gambling. Studies to identify at-risk adults and children are required. The bill requires the maintenance of a toll-free hotline for crisis counseling and referral services and requires video lottery retailers to post signs with the statement, "IF YOU OR SOMEONE YOU KNOW HAS A GAMBLING PROBLEM, HELP IS AVAILABLE" and the toll-free telephone number. Video lottery retailers are also required to print the same message and telephone number on all racing programs.

## Disbursement of Revenue

Chapter 550, F.S., provides minimum statutory requirements for the payment of purses and owners/breeders awards. Purses and awards are primarily based on a percentage of handle wagered, but also may include percentages of cardroom gross receipts, daily license fees from a base year, and contractual agreements. Chapter 550, also provides timelines and conditions under which purses and awards must be disbursed. This bill provides an additional intricate formula for distribution of net terminal income and for distributions from the Video Lottery Purse Trust Fund and the Video Lottery Thoroughbred Trust Fund.

### Net Terminal Income Disbursement

Section 5 of the bill creates s. 24.127, F.S., and allocates net terminal income from video lottery games as follows:

- 32% to the Education Enhancement Trust Fund;
- 2% to counties and/or municipalities where facilities are located;
- 2% to Video Lottery Administration TF for administration;
- 8% to Video Lottery Purse TF; [distribution formula for additional purse payments at pari-mutuel facilities from this trust fund is established in Section 10 of this bill]
- $\frac{1}{4}$  of 1% to the Department of Children and Family Services for the establishment and administration of treatment programs for gambling addiction;
- Disbursement of net terminal income for purses for live performances as follows:
  - 6% to purses for live performances at harness tracks;
  - 6% to purses for live performances at jai alai tracks; or
  - 6% to purses for live performances at greyhound tracks.
- To be retained by the video lottery retailer:
  - 51.75% if a thoroughbred permit to be distributed as follows:
    - 3.30% as breeders' & stallion awards; one-half of which shall be used for special awards; and
    - .25% per written agreement between FHBPA and trainers to fund equine research at UF, including capital improvements, and for medical and retirement benefits for occupational licensees; and
    - 96.45% per written agreement between thoroughbred track and FHBPA;
  - 51.75% if OBS:
    - 3.30% for Florida breeders & stallion awards; and

- 96.7% distributed as provided by contract between FTBA and OBS, including promotion of the industry; to UF for PMW lab and the equine department for purchase of equipment and supplies and for equine research; and
- 45.75% if greyhound, jai alai or harness permit.

#### Video Lottery Purse Trust Fund Disbursements

Section 10 of the bill creates s. 24.132, F.S., and directs disbursements from the trust fund as follows:

- 58% of the proceeds be transferred to the Video Lottery *Thoroughbred* Trust Fund; and
- 42% of the proceeds to pari-mutuel permitholders to be distributed as purses, as follows:
  - 8% to holders of valid harness permit:
    - Requires 6.6% of this 8% and 6.6% of the 6% direct purse contribution from net terminal income to harness tracks to be distributed for breeders and stallion awards and stakes.
  - 7% to holders of valid jai alai permits; and
  - 27% to holders of valid greyhound racing permits.
    - 10% of these distributions and the 6% direct contribution from net terminal income to live purses shall be distributed as additional purses on all live races to Florida-bred greyhounds.

#### Video Lottery Thoroughbred Trust Fund Disbursements

Section 11 of the bill creates s. 24.133, F.S., concerning distribution of funds from the Video Lottery Thoroughbred Trust Fund, and specifies that:

- 6.6% of proceeds go to thoroughbred breeders' and stallion awards and allows the deduction of an administration fee by the Breeders' Association; and
- the remainder to be distributed proportionally among the thoroughbred permitholders conducting live racing for use as purses based on a specified formula. Additionally, 8.5%, or a different percentage to be determined by written agreement between the FHBPA and the FTBA, shall be used as Florida Owners' Awards.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 24.103, F.S., to add new subsections (7), (8), (9), and (10) creating definitions for "video lottery game," "video lottery terminal vendor," "net terminal income," and "video lottery retailer" respectively.

Section 2. Amends s. 24.105, F.S., to create new subsections (21) through (26) concerning powers and duties of the Lottery Department with regard to video lottery operations.

Section 3. Creates a new s. 24.125, F.S., authorizing the Lottery Department to adopt rules relating to video lottery operations.

Section 4. Creates a new s. 24.126, F.S., providing a second degree misdemeanor for a person under 18 years of age to play a video lottery game and for failure to post specified signage on video lottery terminals.

Section 5. Creates a new s. 24.127, F.S., providing authority for certain pari-mutuel permitholders to operate video lotteries and providing for disbursement of revenues.

Section 6. Creates a new s. 24.128, F.S., providing for licensure of video lottery terminal vendors.

Section 7. Creates a new s. 24.129, F.S., to prohibit any local zoning ordinance from prohibiting the operation of video lotteries at a pari-mutuel facility if pari-mutuel operations were or would have been lawful at that location under a county or municipal zoning ordinance on July 1, 1997.

Section 8. Creates a new s. 24.130, F.S., regarding the physical characteristics of video lottery terminals.

Section 9. Creates a new s. 24.131, F.S., establishing a video lottery terminal training program for the service and maintenance of terminals and equipment.

Section 10. Creates a new s. 24.132, F.S., regarding administration of and disbursements from the Video Lottery Purse Trust Fund.

Section 11. Creates a new s. 24.133, F.S., regarding disbursements from the Video Lottery Thoroughbred Trust Fund.

Section 12. Creates a new s. 24.134, F.S., specifying requirements for notification of the availability of assistance for compulsive gambling.

Section 13. Amends subsection (24) of s. 212.02, F.S., to exempt video lottery terminals from the definition of coin-operated amusement machines.

Section 14. Requires the Alcohol, Drug Abuse, and Mental Health Program Office within the Department of Children and Family Services to establish a program for public education, awareness and training regarding problem and compulsive gambling and the treatment and prevention of problem and compulsive gambling.

Section 15. Provides that the act will take effect upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See FISCAL COMMENTS below.

#### **2. Expenditures:**

See FISCAL COMMENTS below.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

See FISCAL COMMENTS below.

#### **2. Expenditures:**

See FISCAL COMMENTS below.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Preliminary indications from the Division of Pari-Mutuel Wagering are that all 30 active, 31 including Hialeah, pari-mutuel permitholders would qualify under the definition of a Video Lottery Retailer. By returning to live operation, the five inactive [4 jai alai and 1 greyhound] permitholders might also be able to offer video lottery wagering operations relatively soon. In addition, the five facilities that operate two

permits at the same facility<sup>3</sup> may seek to construct separate facilities within their respective counties to maximize VLT machines and revenue. If this were to occur, up to 37 pari-mutuel facilities could operate as video lottery retailers and the Division of Pari-Mutuel Wagering would need a physical presence at each new facility.

Also see FISCAL COMMENTS below.

#### D. FISCAL COMMENTS:

As of the date of publication of this analysis neither the Revenue Estimating Conference, nor the Department of the Lottery had completed an estimate of impact with regard to this legislation. Therefore, the estimates of fiscal impact are those gathered from other sources, as noted below:

In a February 2002 Justification Review of the Department of the Lottery, the Legislature's Office of Program Policy Analysis and Government Accountability [OPPAGA] estimated potential recurring transfers to education ranging from \$641 Million to \$1 Billion annually if video lotteries were authorized at pari-mutuel wagering facilities in the state. This estimate was based on projected sales for the entire 2002-2003 fiscal year as if the game had been fully implemented.

Similar legislation filed during the 2002 Legislative Session authorized the operation of VLT's at licensed pari-mutuel facilities. Department of Lottery *preliminary* estimates of the fiscal impact of that legislation ranged from a low of \$573 Million to a high of \$1.1 Billion annually after adjusting for a 25% cannibalization of traditional lottery games. Again, this estimate was based on projected sales for the entire fiscal year as if the games were fully operational.

Testimony before the Subcommittee on Gaming and Pari-mutuels on February 18, 2003, gave vastly differing views on the impact, both fiscal and societal, to the state with regard to authorization of video lottery gambling at the state's pari-mutuel facilities. Testimony from economists and other industry experts differed when discussing potential revenues to state; expenditures by the state for related social services; compulsive or problem gambling behaviors; to what extent tourists would contribute to video lottery revenues; potential for increased crime; job creation and/or loss; and other socio-economic issues.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This 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.

##### 2. Other:

None noted.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to provide adequate rulemaking authority. Subsection (6) of 24.132, F.S., as created in Section 10 of the bill provides that the "department" may adopt rules to provide for the equitable distribution of funds for purses, awards, and jai alai compensation from the Video Lottery Purse Trust Fund. This reference is to the Department of the Lottery, rather than the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering which has regulatory authority and expertise in this area and, in a tied bill, HB 685 is given regulatory authority to administer the Trust

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<sup>3</sup> There are presently 31 active *permits* operating out of 27 *facilities*.

Fund. Likewise, HB 687 gives authority to the Department of Business and Professional Regulation to administer the Video Lottery Thoroughbred Trust Fund.

In addition, the bill does not provide direction as to when and how often the distributions from the Trust Funds should occur.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Newly created s. 24.132(3) [found in Section 10 of the bill] states in part, "...*all proceeds distributed under this section are in addition to and supplement the other funds set forth in this chapter for use as purses, awards, and in the case of jai alai players, compensation.*" The Division of Pari-Mutuel Wagering, Department of Business and Professional Regulation has expressed a concern that this language could be misconstrued to replace the purse distribution requirements in Chapter 550.

The Division of Pari-Mutuel Wagering, Department of Business and Professional Regulation has expressed concern that, due to the complex nature of pari-mutuel regulation, the effective date of this legislation should correspond with the beginning of the state fiscal year.

A later effective date may, however, be preferred by the Department of the Lottery to give that agency ample time within which to ensure the integrity of video lottery operations and become fully operational.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES