

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 939                      Pari-Mutuel Wagering; Escheat of Hialeah Park Racing Permit  
**SPONSOR(S):** Prieguez  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** None

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Subcommittee on Gaming & Pari-mutuels	6 Y, 0 N	Morris	Liepshutz
2) Business Regulation		Morris	Liepshutz
3) Finance and Taxation			
4) Commerce & Local Affairs Apps. [Sub]			
5) Appropriations			

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### SUMMARY ANALYSIS

Thoroughbred permitholders are required to apply each year between December 15 and January 4 for operating dates for the upcoming Thoroughbred Racing Season which runs from June 1 of one year to May 31 of the next year. If a permitholder continues to meet the qualifications required to initially obtain and to retain a permit the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation must issue a *license* by February 15 of each year to operate on the dates requested. A thoroughbred permitholder has an additional period of time to amend the dates approved in the license, but, thereafter, must operate on all dates specified in the license. Failure to operate a "full schedule of live races" during any two consecutive state fiscal years voids the *permit*, which reverts to the state for reissue.

This bill removes from the law those provisions which void the *permit* of a thoroughbred permitholder for failing to operate a full schedule of live racing on the dates specified in the annual license. Additionally, the permit would no longer escheat to the state for reissue. A permitholder's failure to operate a full schedule of live racing would remain a basis for discipline similar to greyhound, jai alai and quarter horse permitholders.

The bill also contains new provisions allowing thoroughbred permitholders to irrevocably elect, by a date certain, not to operate live performances without jeopardizing the continuing validity of the permit. The bill specifically addresses the current situation of Hialeah Park, which is in jeopardy of losing its permit for failing to operate during the last three seasons. The bill excuses Hialeah Park from discipline for failing to operate and specifies that the permit shall remain valid and in good standing. The bill also extends to July 1, 2004, the deadline for Hialeah Park to elect whether to operate live performances during the 2004-2005 racing season.

This bill has no apparent fiscal impact on state expenditures or collections.

The bill takes effect upon becoming law.

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

**STORAGE NAME:** h0939a.br.doc  
**DATE:** March 8, 2004

## 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:

Chapter 14832, Laws of Florida<sup>1</sup>, authorized pari-mutuel wagering on thoroughbred horses, harness horses and greyhounds. Pari-mutuel wagering was authorized for jai-alai performances in 1935<sup>2</sup> and for quarter horses in 1941<sup>3</sup>. The state has traditionally enforced a wide range of regulatory controls over the daily operations of pari-mutuel permitholders. These controls have been primarily designed to protect the health of the pari-mutuel industry, integrity of the games and, subsequently, the state revenues generated by wagering activities.

The original legislation authorizing pari-mutuel wagering on thoroughbreds prohibited head-to-head competition between thoroughbred tracks located in the same county and the Racing Commission in existence at that time was required to set non-conflicting racing dates to ensure that the tracks did not operate at the same time. The governing statute at that time did not require a permitholder to operate all authorized performances and did not provide for the revocation of a permit for a permitholder's failure to operate all authorized performances. For several years there was an annual legislative debate concerning thoroughbred racing dates.

Numerous amendments to chapter 550 have been implemented in more recent years including the repeal of the Racing Commission, repeal of the prohibition for head-to-head competition, and implementation of a uniform tax rate for thoroughbreds. In addition, current law contains provisions that require the Division to seek the revocation of thoroughbred permits and harness horse permits for failure to operate but does not contain similar forfeiture provisions for greyhound, jai alai or quarter horse permitholders.

Currently, between December 15 of each year and January 4 of the following year, a thoroughbred permitholder must file an application for licensure specifying the dates and times the permitholder intends to operate in the upcoming Thoroughbred Racing Season, which runs from June 1 of one year until May 31 of the next year.<sup>4</sup> If the permitholder remains eligible to hold a permit, the Division of Pari-mutuel Wagering (DPMW) of the Department of Business and Professional Regulation must issue a license on or before February 15. The permitholder can amend the application until March 31 of each year but, thereafter, the permitholder must operate a full schedule of live racing as specified in its license as a condition precedent to preserving the validity of the license and the right to retain the permit. If the permitholder fails to operate a full schedule of live racing for two consecutive state fiscal years, the *permit* becomes void and escheats to the state for reissue.<sup>5</sup>

<sup>1</sup> Later codified as Chapter 550, Florida Statutes

<sup>2</sup> Chapter 17074, Laws of Florida

<sup>3</sup> Chapter 25354, Laws of Florida

<sup>4</sup> s. 550.5251, F.S.

<sup>5</sup> s.550.09515 (2) (a), (b), F. S.

This bill deletes subsections (3) and (7) of s. 550.09515, F.S. Subsection (3) required a permit to be voided and become available for reissue whenever a thoroughbred permitholder fails to operate a full schedule of live racing for two consecutive years. Subsection (7) expired by operation of law on July 1, 2003. The bill also changes the date when the DPMW is required to issue a license from February 15, to *on or before April 30* of each year. March 31 is the last day for amending a license. Consequently, the DPMW will no longer issue a license before the deadline for amending an application for dates has elapsed. The bill creates a new procedure allowing a permitholder to make an irrevocable election, by February 15 of each year, not to operate live performances in the ensuing Thoroughbred Racing Season. An election not to operate will not affect the future validity of a permit. However, permitholders who do not make a timely election will be subject to discipline similar to other permitholders pursuant to ss. 550.01215(4) and 550.0251(10).

The bill specifically addresses the possible loss of Hialeah Park's permit due to Hialeah's failure to operate a full schedule of live racing during the 2001-02 and the 2002-03 Thoroughbred Racing Seasons. The bill excuses from discipline any thoroughbred permitholder who failed to operate in the specified two seasons or who failed to operate any performance during 2003-04. The bill states that the permit of such a permitholder remains valid and in good standing. The bill also extends to July 1, 2004, the deadline for a permitholder to make an irrevocable election not to operate during the 2004-05 season.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 550.09515, F.S., to delete subsections (3) [which consists of paragraphs (a) and (b)] and subsection (7). Presently, paragraph (a) of subsection (3) provides that the permit of a pari-mutuel wagering thoroughbred permitholder who fails to pay taxes on a full schedule of live racing for two consecutive years will escheat to the state and paragraph (b) requires the Division of Pari-mutuel Wagering to reissue an escheated thoroughbred permit to a qualified applicant. Subsection (7) forgives any thoroughbred permitholder who failed to pay tax on handle for a full schedule of live performances for the 2001-2002 racing season and expired by operation of law on July 1, 2003.

Section 2. Significantly amends s. 550.5251(2), F.S. As amended, this section requires the Division of Pari-mutuel Wagering to issue licenses for the Thoroughbred Racing Season on or before April 30 of each year, rather than by February 15 of each year. This section provides that a thoroughbred permitholder may irrevocably elect not to operate by a date certain [February 15<sup>th</sup>] without jeopardizing the validity of the permit. Further, this section excuses from discipline and preserves the validity of a permit of any thoroughbred permitholder who did not operate a full schedule of live racing during the 2001-02 and 2002-03 racing seasons, or who failed to operate in the 2003-04 season. The deadline for electing not to operate during the 2003-2004 Thoroughbred Racing Season is extended until July 1, 2004.

Section 3. Provides an effective date upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate: Hialeah Park will be able to retain its permit, which has value should the current ownership decide to conduct live racing and other permissible wagering activities, or sell the facility to another entity in the future.

D. FISCAL COMMENTS:

None.

### 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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments

On February 14, 2003, the Division of Pari-mutuel Wagering of DBPR instituted an administrative complaint and notice of intent to deny license against Hialeah Racing Association, LLC [Hialeah]. The division is seeking the assessment of a fine and an order finding that Hialeah's current license is no longer valid and its permit should be revoked since it has not conducted a full schedule of live racing in accordance with licenses issued to it for the 2001-02 and 2002-03 Thoroughbred Racing Seasons. The complaint is currently pending before the Division of Administrative Hearings.

On January 30, 2004, Hialeah brought suit in Circuit Court in Miami-Dade County seeking declaratory, injunctive, and supplemental relief and filed a Motion to stay in the DOAH case. Hialeah argues that they have a property interest in the thoroughbred permit that is protected by the Fifth and Fourteenth Amendments to the U. S. Constitution, and by Article IV, Section 2 of the State Constitution. As property entitled to constitutional protection, the suit contends that the permit cannot be taken by the state without just compensation. Hialeah further contends that ss. 550.01215(4) and 550.5151(2) are unconstitutional on their face and as applied and cites numerous additional allegations including that they are violative of procedural due process and equal protection.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

