

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.)

Prepared By: Regulated Industries Committee

BILL: SB 4-B

INTRODUCER: Senators Jones, Posey, Geller, and Constantine

SUBJECT: Slot Machine Gaming

DATE: December 6, 2005

REVISED: 12/6/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/10 amendments
2.			WM	
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill creates ch. 551, F.S., to implement s. 23, Art. X of the State Constitution, which was adopted in November 2004, and authorized the use of slot machines in certain pari-mutuel facilities in Miami-Dade and Broward Counties if approved by referendum in each county.

It provides for powers and duties of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation (division) to adopt rules necessary to implement, administer, and regulate slot machine gaming.

It provides that the payout percentage of a slot machine be no less than 85 percent per facility.

It provides for a tax rate on slot machine revenues of 45 percent.

It allow up to 2,000 slot machines permitted for play for each facility.

It requires an initial application fee of \$3 million and annually thereafter upon submission of a renewal application.

It provides that the slot machine gaming areas may be open 365 days a year and open for a maximum of 16 hours per day.

It provides that no person under the age of 21 be permitted in slot machine gaming area, no complimentary alcoholic beverages can be served, and no ATMs within the facilities of the slot machine licensee.

It provides that the division may not accept an application or issue a license until such time as all rules required by the chapter are filed for adoption with the Secretary of State.

It provides that the division may adopt emergency rules after the slot machine license is issued.

It gives the Department of Law Enforcement and local law enforcement agencies concurrent jurisdiction to investigate criminal violations of the chapter and investigate any other criminal violation of law occurring at the facilities.

It gives the division, the Department of Law Enforcement, and local law enforcement agencies unrestricted access to the slot machine licensee facility at all times and requires each licensee to strictly comply with the business transaction laws of the state.

It provides that a slot machine licensee who fails to make tax payments shall be subject to an administrative penalty of \$10,000 for each day the payment is not remitted.

It prohibits persons employed by or performing any function on behalf of the division from being an officer, director, owner, or employee of any person or entity licensed by the division or having or holding any interest, direct or indirect, in or engage in any commerce or business relationship with any person licensed by the division.

It provides for administrative fines or civil penalties up to \$10,000 for persons who intentionally make or cause another to make false statements in any report, disclosure, application, or any other document required under the chapter or rule.

It requires that there be a binding written agreement on file with the division between the applicant and the Florida Horsemen's Benevolent and Protective Association, Inc., that provides for the payment of purses on live thoroughbred races conducted at the licensee's pari-mutuel facility.

It requires that the slot machine licensee offer training to employees on responsible gaming and shall work with a compulsive or addictive gambling prevention program to recognize problem gaming situations and to implement responsible gaming programs and practices.

This bill creates the following sections of the Florida Statutes: 551.101, 551.102, 551.103, 551.104, 551.105, 551.106, 551.107, 551.108, 551.109, 551.111, 551.112, 551.113, 551.114, 551.116, 551.117, 551.118, 551.119.551.121, 551.122 and, 551.123. The bill amends the following sections of the Florida Statutes: 849.15, 895.02, and 215.22.

II. Present Situation:

Slot machines

Slot machines are illegal in Florida as provided under ch. 849, F.S. Section 849.16(1), F.S., defines a slot machine as any machine or device:

that is adapted for use in such a way that, as a result of the insertion of any piece of money, coin, or other object, such machine or device is caused to operate or may be operated and if the user, by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, may:

(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or

(b) Secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.¹

Article X, Section 23, Florida Constitution

A constitutional amendment authorizing Miami-Dade and Broward counties to hold referenda to determine if slot machines should be allowed in existing, licensed pari-mutuel facilities in those counties was approved by the voters at the November 2004 General Election. The amendment permits the Legislature to tax the slot machine revenues and requires that those taxes supplement public education statewide.² The referenda were held on March 8, 2005, passed in Broward County but failed in Miami-Dade County. The amendment was codified at Article X, s. 23 of the Florida Constitution.

Article X, Section 23, Florida Constitution reads as follows:

SECTION 23. Slot machines.--

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for

¹ Section 849.16(1), F.S.

² Amendment 4, at <http://election.dos.state.fl.us/initiatives/fulltext/30910-2.htm>.

implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become effective when approved by vote of the electors of the state.

There are four existing pari-mutuel facilities in Broward County:

Hollywood Greyhound Track (Hartman and Tyner, Inc.), located on approximately 50 acres;

Gulfstream Park Racing Association, located on approximately 240 acres;

Dania Jai Alai (the Aragon Group, Inc.), located on approximately 47 acres; and Pompano Park Racing (PPI, Inc.), located on approximately 180 acres.

Payouts

Payback or payout is the overall percentage that a machine will return to the players over the long run. These figures are programmed into the machines computer system and are set by the manufacturer to the specifications supplied by the facility. The payouts usually range anywhere from 75 to 99 percent. Some states regulate the minimum payout that a machine can return.

Experts say that the average player will never play long enough to see the overall return. If a person plays \$100 through a slot machine with a 94 percent payout and wins \$5,000 and then plays \$100 on another machine with a 99 percent return, the player can still lose it all in a few hours.³

All slot machines have meters that record monies in and out of the machine. The coinless machines with bill receptors count the “credits” that have been played through the machine. Most facilities have automated computer systems that track the information from the machines into a central database. The machine information can be reviewed to determine the payout for any given period of time.

Progressive Slot Machines

Progressive slot machines are a group of machines linked together by a network. Big jackpots are created when a percentage of the money played on a machine is added. The two types of progressive machine networks are the area wide network and the proprietary network. The area wide network includes machines from multiple casinos which are linked together throughout the state or even around the country. Proprietary networks are linked throughout the casino.⁴

³ *Your Guide to Casino Gambling; Slot Machine Payback Percentages*, from Bill Burton <http://casinogambling.about.com/od/slots/a/percentage.htm> (last visited December 1, 2005)

⁴ *Casino Gambling; Progressive Slot Machines* by Bill Burton. <http://casinogambling.about.com/library/weekly/aa062600.htm> (last visited December 1, 2005)

Differences in Electronic Bingo, Video Lotteries and Slot Machines

Electronic Bingo is currently played in Florida’s Indian casinos. Electronic Bingo is considered Class II gaming and allows the bingo terminals to be linked together. Slot machines and video lottery terminals are similar except that on a slot machine, play and outcomes are determined by a random number generator located inside the terminal itself while the video lottery terminal outcomes are governed by a central computer system via an interlinked network.⁵

Other states with slot machines at pari-mutuel facilities

In the last 15 years seven states have added slot machines at existing pari-mutuel facilities:

- 1990 – West Virginia
- 1992 – Rhode Island
- 1995 – Iowa, Delaware
- 1999- New Mexico
- 2002- Louisiana
- 2004 – New York

As horse and dog tracks have dwindled, adding slot machines and video lottery has been viewed as a way to save the tracks and generate revenues to the state.⁶ The chart below shows how the varying tax rates in the different states and how some have expanded the locations for slot machines beyond the race tracks.

Tax rates on slot machines in other states⁷

	Delaware	Iowa	Louisiana	New Mexico	New York	Pennsylvania	Rhode Island	W.V.
Tax rate	35.4%	22-24%	18.5-32%	25%	61%	34%	61%	38%
No. of slot machines	1000 but can be approved for 1500	No max	Varies	Up to 600 per track	No max	3000 per site	No max	Up to 400; special permission thereafter
No. of Locations	6,410	3,513	14,296	2,385	8	14	2	4

Local Agreements

Each of the four pari-mutuel facilities have entered into agreements with Broward County to assist in defraying the cost of local government impacts. The facilities have agreed to pay \$625,000 to the county no later than September 30, 2005. The facilities shall also make a

⁵ *Defining Video Lottery Terminals, /Slot Machines and Electronic Bingo Devices*, American Gaming Association, March 15, 2005

⁶ “Playing Slots While the Horses Trot,” *State Legislatures*, June 2004.

⁷ Information provided from Amy Baker, Coordinator, Legislative Office of Economic & Demographic Research.

monthly payment of 1.5 percent of the cumulative amounts of all gross slot revenues generated for each and every slot machine until gross slot revenues reach \$250 million on an annual basis.⁸

Litigation

Prior to the November general election the ballot initiative was challenged and the Final Judgment in favor of the sponsor of the ballot initiative, Floridians for a Level Playing Field, is under appeal to the 1st DCA. Subsequent to the adjournment of the 2005 Legislative Session three separate legal challenges have arisen.

Floridians Against Expanded Gambling, et al v. Floridians for a Level Playing Field, et al (1st DCA)

The plaintiffs brought suit in Leon County Circuit Court prior to the 2004 General Election to strike the slots initiative from the ballot or to have the election on the initiative null and void and not given effect.⁹

On January 1, 2005, Circuit Judge Nikki Clark, issued a Final Summary Judgment in favor of the defendant, Floridians for a Level Playing Field, and dismissed the Complaint against Defendant Glenda Hood, Secretary of State.

The plaintiffs appealed Judge Clark's summary judgment to the 1st District Court of Appeal and oral arguments were scheduled for November 23, 2005.

PPI, Inc. et al. v. Department of Business and Professional Regulation

Representative Ellyn Bogdanoff petitioned in the Department of Business and Professional Regulation (DBPR) for a declaratory statement holding that the slot machine constitutional amendment is of no force or effect until the Florida Legislature enacts implementing legislation and therefore the Division of Pari-Mutuel Wagering has the right to take disciplinary action against any licensee that possesses or operates a slot machine.¹⁰

The division noticed the request in the Florida Administrative Weekly as required by s. 120.565(3), F.S. and the pari-mutuel facilities filed a petition in the First District Court of Appeal asking the court to prohibit DBPR from responding to the petition for declaratory statement, arguing that the declaration is in excess of the division's jurisdiction.

The 1st DCA issued an order requiring DBPR to show why the writ of prohibition should not be granted. DBPR filed a Response on July 20 and the appellants filed their Reply on August 15, 2005.

⁸ "Gross slot revenues" are defined in the agreement as the total of wagers received by a slot machine less the sum of: (1) cash or cash equivalents paid out to patrons as a direct result of playing a slot machine which are paid to patrons either manually or paid out by the slot machine; and (2) cash paid to purchase annuities to fund prizes payable to patrons over a period of time as a direct result of playing a slot machine; and (3) the cost of any personal property distributed to a patron as the direct result of playing a slot machine, which does not include travel expenses, food refreshments, lodging or services.

⁹ No. 1D05-575 (Fla. 1st DCA); No. 04 CA 2342 (Fla. 2nd Cir.Ct.).

¹⁰ No. 1D05 2699 (Fla. 1st DCA).

No Casinos, Inc. v. Hartman & Tyner, Department of Business and Professional Regulation, et al. (Leon County Circuit Court)

No Casinos, Inc., a Florida association interested in limiting gambling in Florida, brought suit against the four pari-mutuel facilities and DBPR asking the court to rule that the constitutional amendment is of no force or effect until the Legislature enacts implementing legislation. The pari-mutuel facilities responded asking the court to dismiss the suit or, in the alternative, to move the case to Broward County.¹¹ The suit was filed on May 24, 2005.

In late June 2005 the DBPR filed a cross-claim against the defendants asking the court to declare that constitutional amendment is not self-executing and that slot machines are not authorized until the Florida Legislature enacts implementing legislation and an executive agency adopts rules. (Count 1)

The cross-claim also requested that the court declare that DBPR has the right to discipline any licensee for violation of rules and regulations under its jurisdiction in the event a licensee possess or operates a slot machine at its pari-mutuel facility.¹²

Plaintiffs filed a Notice of Voluntary Dismissal on August 22, 2005; however, the cross-claim filed by the DBPR remained outstanding and a hearing on the pari-mutuels Motion to Dismiss the Cross-Claim was held on September 15, 2005. On October 4, 2005, Circuit Judge Terry P. Lewis denied the defendant Hartman & Tyner motion to dismiss the cross claim with regard to Count I and granted motion to dismiss with regard to Count II. The cross-claim was stayed pending resolution of the appeal to the 4th DCA of the Final Judgment granting Declaratory Judgment and Injunction issued by the 17th Judicial Circuit on June 22, 2005.

Hartman & Tyner, Inc. et al. v. Satz (Circuit Court in Broward County)
Satz v. Hartman & Tyner, Inc. et al. (4th DCA)

The pari-mutuels facilities in Broward County filed suit, also on May 24, 2005, asking the circuit court to declare that they are entitled to transport, possess, install, and operate slot machines and to permanently enjoin the Broward State Attorney, Michael J. Satz, from prosecuting these facilities for transporting, possessing, installing, or operating slot machines at their facilities in Broward County.

At a hearing on June 21, 2005, Circuit Court Judge Leroy H. Moe ruled that the State Attorney was prohibited from initiating criminal or civil action against the plaintiffs for transporting, possessing, installing, or operating slot machines on or after July 1, 2005. The judge retained jurisdiction to allow either the Broward County Commission or any other legally authorized

¹¹ No. 2005-CA-001188 (Fla. 2nd Cir.Ct.)

¹² The claim lists numerous areas in which DBPR might exercise jurisdiction in this respect, such as whether new facilities may be built in light of the restriction to existing facilities, whether licensee may hold a cardroom license and operate slot machines simultaneously, what days and hours the gaming area may operate; regulation and licensing of employees with access to slot machine money, among others)

legislative body to enact reasonable rules and regulations to implement the constitutional amendment. The Broward State Attorney has appealed Judge Moe's order to the 4th DCA.

The rules of appellate procedure provide that the final judgment is stayed (not effective) during the time the appeal is pending unless a party successfully demonstrates a compelling reason to the court to vacate the stay. At an August 22, 2005, hearing on the plaintiffs' motion to lift the stay Judge Moe found for the plaintiffs. The written order vacating the stay, filed on August 30, 2005, stated that there were compelling circumstances which warranted the lifting of the stay that being "the people's right to have their vote count, and the Legislature's deliberate or negligent thwarting of that most compelling right." A subsequent Emergency Motion to reinstate the stay by Broward State Attorney Satz was denied by the 4th DCA.

The 4th DCA has granted the requests from both the Legislature and the Governor to file amicus briefs in the case. Those briefs were filed in mid-September, 2005 and answer briefs have been filed by the appellee Hartman & Tyner.

Indian Gaming

There are currently seven Florida Tribal casinos, including two recently opened Hard Rock casinos in Hollywood and Tampa, offering a variety of poker games and electronic bingo. Information regarding the revenues generated by these tribes is unavailable, but revenue estimates have been released on a regional basis by the Indian Gaming Commission. Florida falls into Region VI, which includes Alabama, Connecticut, Florida, Louisiana, Mississippi, North Carolina, and New York. There are 24 Indian Gaming Operations in this region with gaming revenues at over \$4 billion for Fiscal Year 2003-04. These revenues are untaxed by the state.¹³

Congress passed the Indian Gaming Regulatory Act of 1988 (IGRA)¹⁴ in order to provide a statutory basis for the operation and regulation of gaming by Indian tribes.¹⁵ The act permits states to determine the scope and extent of tribal gaming through tribal-state compacts for Class III gaming and gives the tribes regulatory authority over Class I and II gaming.

Each of the three classes of games provided in the IGRA has different regulatory schemes. Class I gaming is defined as traditional Indian gaming and social gaming for minimal prizes.¹⁶ Regulatory authority over Class I gaming is vested exclusively in tribal governments.¹⁷

Class II gaming includes bingo and card games. Bingo is defined as a game of chance (whether or not electronic, computer, or other technological aids are used) and, if played in the same location as bingo, includes pull-tabs, punchboards, tip jars, instant bingo, and other games similar to bingo. Card games are defined as those that are explicitly authorized by the laws of the state or are not explicitly prohibited by the state. Slot machines or electronic facsimiles of any game of chance are specifically excluded from the definition of Class II games.¹⁸

¹³ Indian Gaming Commission website, <http://www.nigc.gov/nigc/index.jsp>.

¹⁴ 25 U.S.C. 2701, *et seq.*

¹⁵ *Seminole Tribe of Florida v. State of Florida*, 517 U.S. 44 (1996).

¹⁶ 25 U.S.C. s. 2706(6).

¹⁷ 25 U.S.C. s. 2710(a)(1).

¹⁸ 25 U.S.C. s. 2703(7).

Class III gaming includes all forms of gaming that are neither Class I nor II.¹⁹ These games include casino games such as roulette, craps, and keno, slot machines, banking card games, any sports betting and pari-mutuel wagering, and lotteries.²⁰

Before a tribe may lawfully conduct Class III gaming, the following conditions must be met: (1) the particular form of Class III gaming that the tribe wants to conduct must be permitted in the state in which the tribe is located; (2) the tribe and the state must have negotiated a compact that has been approved by the Secretary of the Interior, or the Secretary must have approved regulatory procedures; and (3) the tribe must have adopted a tribal gaming ordinance that has been approved by the Indian Gaming Commission or its chairman.²¹

The compact may contain any subjects directly related to the operation of gaming activities. A state or political subdivision does not have authority to impose taxes, fees, charges, or other assessments upon tribes that seek to operate Class III gaming, and federal law prohibits a state from refusing to negotiate based on the lack of authority in such state, or its political subdivision to, imposing a tax, fee, charge, or other assessment.

A tribe may agree to pay assessments to a state or a political subdivision to defray the costs of state regulation of its Class III gaming activities and may agree to a payment in lieu of taxes to the state in amounts comparable to amounts assessed by the state for comparable activities.²²

III. Effect of Proposed Changes:

The bill creates ch. 551, F.S., to implement s. 23, Art. X of the State Constitution, which was adopted in November 2004, and authorized the use of slot machines in licensed pari-mutuel facilities in Miami-Dade and Broward Counties if approved by referendum in each county.

Definitions

Section 551.102, F.S. provides the following definitions:

- “Distributor” means any person who sells, leases, or offers or otherwise provides, distributes, or services any slot machine or associated equipment for use or play of slot machines in this state. A manufacturer may be a distributor within this state.
- “Designated slot machine gaming area” means the one specific area of a facility of a slot machine licensee in which slot machine gaming may be conducted in accordance with the provisions of the chapter.
- “Division” means the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation.
- “Eligible facility” means any existing licensed pari-mutuel facility located in Miami-Dade County or Broward County at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and

¹⁹ 25 U.S.C. s.2703(8).

²⁰ 25 C.F.R. s. 502.4.

²¹ 25 U.S.C. s. 2710(d).

²² *Id.*

- 2003 and is approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county.
- “Manufacturer” means any person who manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs, or otherwise makes modifications to any slot machine or associated equipment for use or play of slot machines in this state for gaming purposes. A manufacturer may be a distributor within the state.
 - “Progressive system” means a computerized system linking slot machines in one or more licensed facilities within this state and offering one or more common progressive payouts based on the amounts wagered.
 - “Slot machine” means, for purposes of this chapter, any mechanical or electrical contrivance, terminal that may be capable of downloading slot games from a central server system, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from machine or manually. The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. A slot machine may utilize spinning reels or video displays or both. A slot machine is not a “coin-operated amusement machine” as defined in s. 212.02(24), F.S., and slot machines are not subject to the tax imposed by s. 212.05(1)(h), F.S..
 - “Slot machine license” means a license issued by the division authorizing an eligible facility to place and operate slot machines as required by s. 23, Art. X of the State Constitution, the provisions of this chapter and division rules.
 - “Slot machine licensee” means a pari-mutuel permitholder who holds a license issued by the division pursuant to this chapter that authorizes such person to possess a slot machine within facilities specified in s. 23, Art. X of the State Constitution and allows slot machine gaming.
 - “Slot machine operator” means a person employed or contracted by the owner of an eligible facility to conduct slot machine gaming at that eligible facility.
 - “Slot machine revenues” means the total of all cash and property received by the slot machine licensee from slot machine gaming operations less the amount of cash, cash equivalents, credits, and prizes paid to winners of slot machine gaming.

Powers and duties

Section 551.103, F.S., provides for powers and duties of the division to adopt rules necessary to implement, administer, and regulate slot machine gaming. The rules shall include:

- Procedures for applying for a license and renewal of a license;
- Procedures for establishing technical requirements in addition to the qualifications which shall be necessary to receive a slot machine license or slot machine occupational license;

- Procedures relating to slot machine revenues, including verifying and accounting for such revenues, auditing, and collecting taxes and fees consistent with this chapter;
- Procedures for regulating, managing, and auditing the operation, financial data, and program information relating to slot machine gaming that allows the division and the Department of Law Enforcement to audit the operation, financial data, and program information of a slot machine licensee, as required by the division or the Department of Law Enforcement, and shall provide the division and the Department of Law Enforcement with the ability to monitor on a real-time basis, at any time, wagering patterns, payouts, tax collection, and compliance with any rules adopted by the division for the regulation and control of slot machines operated under this chapter;
- Procedures for requiring each licensee at his or her own cost and expense to supply the division with a bond with the penal sum of \$2 million payable to the Governor and his or her successors in office for the licensee's first year of slot machine operations; and thereafter, the licensee shall file a bond with the penal sum as determined by the division pursuant to rules promulgated to approximate anticipated state revenues from the licensee's slot machine operations;
- Procedures for requiring licensees to maintain specified records and submit any data, information, record, or report, including financial and income records, required by this chapter or determined by the division to be necessary to the proper implementation and enforcement of this chapter;
- Procedures for requiring that the payout percentage of a slot machine shall be no less than 85 percent per facility; and
- Procedures for minimum standards for security of the facilities, including floor plans, security cameras, and other security equipment.

The bill gives the division authority to conduct investigations to fulfill its responsibilities under the provisions of the chapter.

The bill gives the Department of Law Enforcement and local law enforcement agencies concurrent jurisdiction to investigate criminal violations of the chapter and investigate any other criminal violation of law occurring at the facilities.

The bill gives the division, the Department of Law Enforcement, and local law enforcement agencies unrestricted access to the slot machine licensee facility at all times and requires each licensee to strictly comply with the business transaction laws of the state.

The bill allows the division, the Department of Law Enforcement, and local law enforcement agencies to:

- Inspect and examine premises where slot machines are offered for play;
- Inspect slot machines and related equipment and supplies;
- Collect taxes, assessments, fees, and penalties; and
- Deny, revoke, suspend, or place conditions on a licensee who violates the provisions of the chapter and rules.

The bill gives the division authority to revoke or suspend the license of a person who is no longer qualified or who after receiving a license is found to have been unqualified at the time of application.

The bill does not:

- prohibit the Department of Law Enforcement or any law enforcement authority whose jurisdiction includes a licensed facility from conducting investigations of criminal activities occurring at the facility of the slot machine licensee;
- restrict their access to the slot machine licensee facility;
- restrict their access to information and records necessary to the investigation of criminal activity.

The bill allows the division, at any time after the issuance of a license, to adopt emergency rules.

License to conduct slot machine gaming

Section 551.104, F.S., provides that a license shall be issued to conduct slot machine gaming after the division has investigated the applicant, and there has been a finding that the applicant is qualified, the application is complete, and the fee has been paid.

The bill requires that the voters of the county where an applicant's facility is located must have authorized slot machines within the existing pari-mutuel facilities before an application may be approved.

The bill provides that a slot machine license may be issued only to a licensed pari-mutuel permit holder, and slot machine gaming may only be conducted at the same facility where the permitholder is authorized to conduct pari-mutuel activities.

The bill provides conditions to licensure that require the applicant:

- To continue to be in compliance with the chapter;
- To continue to be in compliance with ch. 550, F.S., where applicable, and maintain the pari-mutuel permit and license in good standing pursuant to the provisions of ch. 550, F.S.;
- To conduct no fewer than a full schedule of live racing or games as defined in s. 550.002(11);
- Upon approval of any changes relating to the pari-mutuel permit by the division, be responsible for providing appropriate current and accurate documentation on a timely basis to the division in order to continue the slot machine license in good standing;
- To allow unrestricted access and right of inspection by the division and the Department of Law Enforcement to facilities of the licensee where activity relative to the conduct of slot machine gaming is conducted;
- To ensure that the facilities-based computer system that is used for operational and accounting functions of the slot machine facility is specifically structured to facilitate regulatory oversight;

- To ensure that each slot machine is protected against manipulation or tampering to affect the random probabilities of winning plays;
- To submit a security plan that includes the facilities' floor plan, the locations of security cameras, and a listing of all security equipment that is capable of observing and electronically recording activities being conducted in the facilities of the slot machine licensee;
- Upon licensure, to use the Internet-based job-listing system of the Agency for Workforce Innovation when advertising employment opportunities;
- A slot machine license is not transferable;
- A slot machine licensee shall keep and maintain permanent daily records of its slot machine operation and shall maintain the records for a period of not less than 5 years;
- A slot machine licensee shall file a monthly report with the division of the records of the slot machine operation;
- A slot machine licensee shall file with the division an audit of the receipt and distribution of all slot machine revenues provided by an independent certified public accountant verifying compliance with all financial and auditing provisions of the chapter and the associated rules; and
- The division has a reciprocal agreement to share any information with the Department of Law Enforcement, any other law enforcement agency having jurisdiction over slot machine gaming or pari-mutuel activities, or any other state or federal law enforcement agency the division determines appropriate.

License renewal

Slot machine licenses are to be renewed annually. The license shall be renewed if the division determines the application is complete, the qualifications have been met, and the fee has been paid. The applicant is required to attest that any information that has changed does not affect the applicant's qualifications.

License Fee

Section 551.106, F.S., requires that upon submission of the initial application for a slot machine license and annually thereafter upon submission of a renewal application, the licensee pay to the division's nonrefundable license fee of \$3 million.

The license fee shall be deposited annually into the Pari-mutuel Wagering Trust Fund of the Department of Business and Professional Regulation for the regulation of slot machine gaming by the division and investigative and enforcement functions of the Department of Law Enforcement.

Prior to January 1, 2008, the division shall evaluate the license fee and make recommendations to the President of the Senate and the Speaker of House of Representatives regarding the optimum level of slot machine license fees in order to properly support the slot machine regulatory program.

Tax

The tax rate on slot machine revenues is 45 percent and shall be paid to the division for deposit into the Pari-mutuel Wagering Trust Fund for immediate transfer by the Chief Financial Officer for deposit into the Educational Enhancement Trust Fund in the Department of Education for public education funding statewide.

The tax money can not be used for recurring appropriations. Any interest earnings on the tax revenues shall also be transferred to the Educational Enhancement Trust Fund.

Payment and Disposition of Taxes

Section 551.106(3), F.S., provides that payment for the tax on slot machine revenues imposed by this section shall be paid to the division. The division shall deposit the monies with the Chief Financial Officer, to the credit of the Pari-mutuel Wagering Trust Fund.

The slot machine licensee is required to remit to the division by 3 p.m. Wednesday of each week for taxes imposed and collected on slot machine revenues for the preceding week ending on Sunday.

The slot machine licensee is required to file a report under oath by the 5th day of each calendar month for all taxes remitted during the preceding calendar month. The payments must be accompanied by a report under oath showing all slot machine gaming activities of the preceding calendar month and such other information as may be prescribed by the division.

Failure to Pay tax; Penalties

Section 551.106(4), F.S., provides that a slot machine licensee who fails to make tax payments shall be subject to an administrative penalty of \$10,000 for each day the payment is not remitted.

Section 551.106(5), F.S., provides that the division may require slot machines licensees to remit taxes, fees, fines, and assessments by electronic funds transfer.

Occupational license required; application; fee

Section 551.107(1), F.S., provides that licensed individuals and entities under this section require heightened state scrutiny which includes fingerprints for a criminal records check.

Section 551.107(2), F.S., requires licenses be issued to persons who hold positions with access to designated slot machine gaming areas for the following categories:

- General occupational licenses for general employees, food service, maintenance, and other similar service and support employees with access to the designated slot machine gaming area.
 - Service and support employees with a current pari-mutuel occupational license issued pursuant to ch. 550, F.S., and a current background check are not required to submit to an additional background check for a slot machine occupational license as long as the pari-mutuel occupational license remains in good standing.

- Professional occupation licenses for any person, proprietorship, partnership, corporation, or other entity that is authorized by a slot machine licensee to manage, oversee, or otherwise control daily operations as a slot machine manager, floor supervisor, security personnel, or any other similar position of oversight of gaming operations.
- Business occupational licenses for any slot machine management company or slot machine business associated with slot machine gaming or a person who manufactures, distributes, or sells slot machines, slot machine paraphernalia, or other associated equipment to slot machine licensees or any person not an employee of the slot machine licensee who provides maintenance, repair, or upgrades or otherwise services a slot machine or other slot machine equipment.

The bill provides that slot machine occupational licenses are not transferable.

Section 551.107(3), F.S., provides that a slot machine licensee shall not employ or otherwise allow a person to work at a slot machine facility unless the person holds a valid occupational license. It requires that the business must also hold an occupational license.

Section 551.107(4), F.S., requires that persons seeking a slot machine occupational license or renewal must apply to the division and include the appropriate fee. The division shall establish, by rule, an annual renewal schedule. The license is valid for three years. Fees shall not exceed \$50 for a general or professional occupational license of an employee or \$1,000 for a non-employee providing goods or services to the slot machine licensee. License fees for general occupational license shall be paid for by the slot machine licensee.

Section 551.107(5), F.S., provides that if the state gaming commission or other similar regulatory authority of another state or jurisdiction extends to the division reciprocal courtesy to maintain disciplinary control, the division may:

- Deny an application for or revoke, suspend, or place conditions or restrictions on a license of a person or entity who has been refused a license by any other state gaming commission or similar authority;
- Deny an application for or suspend or place conditions on a license of any person or entity who is under suspension or has unpaid fines in another jurisdiction.

Section 551.107(6), F.S., allows the division to deny, suspend, revoke or declare ineligible an occupation license if the applicant or licensee:

- Violates provisions of this chapter or rules of the division;
- Has been convicted in this state or any other state of a capital felony or a felony;
- Has been convicted of an offense in any other state which would be a felony under the laws of this state involving:
 - Arson,
 - Trafficking in, conspiracy to traffic in, smuggling, importing, conspiracy to smuggle or import, or delivery, sale, or distribution of a controlled substance, or
 - A crime involving a lack of good moral character, or has had a slot machine gaming license revoked by this state, or

- Has had a slot machine gaming license revoked by any other jurisdiction for an offense related to slot machine gaming.
- Has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States, if the felony or misdemeanor is related to gambling or bookmaking as contemplated in s. 849.25, F.S.

Section 551.107(7), F.S., requires that upon initial application and every three years thereafter, fingerprints for all slot machine occupational license applications be taken as required by the Florida Department of Law Enforcement and the Federal Bureau of Investigations for a level II criminal records check.

Prohibited relationships

Section 551.108(1), F.S., provides that a person employed by or performing any function on behalf of the division shall not:

- Be an officer, director, owner, or employee of any person or entity licensed by the division;
- Have or hold any interest, direct or indirect, in or engage in any commerce or business relationship with any person licensed by the division.

Section 551.108(2), F.S., prohibits a manufacturer or distributor of slot machines from entering into a contract with a slot machine licensee that provides any revenue sharing of any kind or nature that is, directly or indirectly, calculated on the basis of a percentage of slot machine revenues.

Section 551.108(3), F.S., prohibits a manufacturer or distributor of slot machines or any equipment necessary for the operation of slot machines or an officer, director, or employee of any such manufacturer or distributor from having any ownership or financial interest in a slot machine license or in any business owned by the slot machine licensee.

Section 551.108(4), F.S., prohibits a licensee or any entity conducting business on or within a licensed slot machine operation from employing any employee of a law enforcement agency or regulatory agency that has jurisdiction over the licensed premises in an off-duty or secondary employment capacity for work within any designated slot machine gaming area or in any restricted area that supports slot machine operations that requires an occupational license to enter. If approved by the employee's primary employing agency, off-duty or secondary employment that is not prohibited by this section may be permitted.

Prohibited acts

Section 551.109(1), F.S., provides for administrative fines or civil penalties up to \$10,000 for persons who intentionally make or cause another to make false statements in any report, disclosure, application, or any other document required under the chapter or rule.

Section 551.109(2), F.S., provides for administrative fines or civil penalties up to \$10,000 for any person who possesses a slot machine without a license or who possesses a slot machine at any location other than at the slot machine licensee facility.

Section 551.109(3), F.S., provides that any person who knowingly excludes, or takes any action in an attempt to exclude, anything or its value from the deposit, counting, collection, or computation of revenues from slot machine activity, or any person who by trick, sleight-of-hand performance, a fraud or fraudulent scheme, or device wins or attempts to win, for himself or herself or for another, money or property or a combination thereof or reduces or attempts to reduce a losing wager in connection with slot machine gaming commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 551.109(4), F.S., provides for criminal penalties for any person who intentionally manipulates the outcome, payoff, or operation of a slot machine by physical tampering, or by use of any object, instrument, or device, whether mechanical, electrical, magnetic, or other means, manipulates the outcome, payoff, or operation of a slot machine.

Section 551.109(5), F.S., provides that theft of any slot machine proceeds or of property belonging to the slot machine operator or licensed facility by an employee of the operator or facility or by an employee of a person, firm, or entity that has contracted to provide services to the operator or facility constitutes a felony of the third degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.

Section 551.109(6), F.S., provides that any law enforcement officer or slot machine operator who has probable cause to believe that a violation of subsection (3), subsection (4), or subsection (5) of this section has been committed by a person and that the officer or operator can recover the lost proceeds from the activity by taking the person into custody may, for the purpose of attempting to effect the recovery or for prosecution, take the person into custody on the premises and detain the person in a reasonable manner and for a reasonable period of time.

Legal devices

Section 551.111, F.S., provides that notwithstanding any provision of law to the contrary, slot machines manufactured, sold, distributed, possessed, or operated according to the provisions of the chapter are considered lawful.

Exclusions of certain persons

Section 551.112, F.S., provides that the division has the power to exclude certain persons from the facility for conduct that would constitute a violation of the chapter or rules of the division. The division may exclude any person who has been ejected from a facility of a slot machine licensee in this state or who has been excluded from any facility of a slot machine licensee or game facility in another state by the state gaming authority unless the division finds that the licensee's presence would not be adverse to the public interest or to the integrity of the industry.

Minors prohibited from slot machines

Section 551.112, F.S., provides that a person under the age of 21 may not:

- Play any slot machine;
- Have access to the designated slot machine gaming area;
- Be employed in a position that allows or requires access to the designated gaming area.

The bill provides that a slot machine licensee or agent or employee of a slot machine licensee may not knowingly allow a person who has not attained 21 years of age:

- To play or operate any slot machine;
- To be employed in any position allowing or requiring access to the designated slot machine gaming area of a facility of a slot machine licensee;
- To have access to the designated slot machine gaming area of a facility of a slot machine licensee.

The bill requires clear and conspicuous signage in the designated slot machine gaming areas regarding the age limitation.

Designated slot machine gaming areas

Section 551.114, F.S., requires that the designated slot gaming areas:

- Allow up to 2,000 slot machines are permitted for play;
- Have pari-mutuel races or games displayed and have pari-mutuel wagering on live, intertrack, and simulcast races may be offered;
- Provide signage warning of the risks and dangers of gambling, showing the odds of winning and payout percentages, and informing patrons of the toll-free telephone number available to provide information and referral services regarding compulsive or problem gambling shall be posted;
- Be located within the current live gaming facility or in existing building that must be contiguous and connected to the live gaming facility. Any new construction must be contiguous and connected to the live gaming facility; and
- Provide adequate office space at no cost to the division and the Department of Law Enforcement for the oversight of slot machine operations.

Days and hours of operation

Section 551.116, F.S., provides that the slot machine gaming areas may be open 365 days a year and open for a maximum of 16 hours per day.

Penalties

Section 551.117, F.S., provides that the division may revoke or suspend a slot machine license when the licensee knowingly violates any provision of the chapter or rule under the chapter. Civil penalties not to exceed \$100,000 for each count or separate offense may be imposed in lieu of suspension or revocation. All penalties collected must be deposited into the Pari-mutuel Wagering Trust Fund.

Compulsive or addictive gambling prevention program

Section 551.118, F.S. provides that the slot machine licensee shall offer training to employees on responsible gaming and shall work with a compulsive or addictive gambling prevention program to recognize problem gaming situations and to implement responsible gaming programs and practices.

The division shall, subject to competitive bidding, contract for provision of services related to the prevention of compulsive and addictive gambling. The contract shall provide for an advertising program to encourage responsible gaming practices.

Funding for the program shall be from an annual nonrefundable regulatory fee of \$250,000 to be paid by each licensee to the division.

Caterer's license

Section 551.119, F.S., provides that a slot machine licensee is entitled to a caterer's license pursuant to s. 565.02, F.S., on days on which the pari-mutuel facility is open to the public for slot machine game play as authorized by the chapter.

Prohibited activities and devices

Section 551.121, F.S., prohibits:

- Complimentary or reduced-cost alcoholic beverages from being served to persons playing a slot machine. The cost of the alcoholic beverages shall cost at least the same amount as alcoholic beverages served to the general public at a bar within the facility.
- Making any loan, providing credit, or advancing cash in order to enable a person to play a slot machine.
- ATM's or similar devices designed to provide credit or dispense cash from a person's personal account to be located within the facilities of the slot machine licensee.
- Accepting or cashing any government-issued check from any person.

Each slot machine must be protected by the slot machine licensee against manipulation or tampering to affect the random probabilities of winning plays. The Department of Law Enforcement or the division has the authority to suspend play and examine any slot machine upon suspicion of any manipulation or tampering.

A slot machine, or the computer operating system linking the slot machine, may not be linked by any means to any other slot machine or computer operating system of another slot machine licensee. Progressive systems are prohibited from use with slot machines within or between licensed facilities.

Paper currency or tickets or an electronic payment system for wagering and the return or delivery of payouts to the player in the form of tickets that may be exchanged for cash, merchandise, or other items of value are the only accepted methods of payment at the slot machine facility.

Rulemaking

Section 551.122, F.S., provides that the division may adopt rules pursuant to ss. 120.536(1), F.S., and 120.54, F.S., to administer the provision of the chapter.

Licensure requirements regarding purses and awards

Section 551.123, F.S., provides that issuance or renewal of a slot machine license for a thoroughbred racing permit holder under ch. 550, F.S. depends on whether there is a binding written agreement on file with the division between the applicant and the Florida Horsemen's Benevolent and Protective Association, Inc., that provides for the payment of purses on live thoroughbred races conducted at the licensee's pari-mutuel facility. A binding written agreement between the applicant and the Florida Thoroughbred Breeders' Association governing the payment of breeders', stallion, and special racing awards on live thoroughbred races must also be on file with the division.

All purses and awards are subject to the terms of ch 550, F.S. All sums for breeders', stallion, and special racing awards must be remitted monthly to the Florida Thoroughbred Breeders' Association for the payment of awards subject to an administrative fee.

If a licensee materially fails to comply with the terms of the agreement, the division shall suspend the slot machine license in accordance with ch. 120, F.S.

Arbitration by the American Arbitration Association is required if an agreement has not been filed 120 days prior to the scheduled issuance of a slot machine license or renewal. The applicant must ask the American Arbitration Association to furnish a list of 11 arbitrators. Each party selects a single arbitrator within 10 days after receipt of the request. The two arbitrators then select one additional arbitrator from the list within the next 10 days.

If an agreement has not been filed 60 days prior to the scheduled issuance of a slot machine license or renewal, the matter is immediately submitted to mandatory binding arbitration before the three arbitrators.

At the conclusion of the proceedings, which must be no later than 30 days prior to the scheduled issuance of the slot machine license or renewal, the arbitration panel shall present a proposed agreement to the parties which shall be effective until the last day of the license or renewal or until the parties enter into a different agreement.

If neither of the agreements is filed by the deadlines established in this section, arbitration regarding each agreement shall proceed independently, with separate lists of arbitrators, arbitration panels, arbitration proceedings, and resulting agreements.

Manufacture, sale, possession, etc., of coin-operated devices prohibited

Section 849.15(2), F.S., provides that in any county of the State of Florida where slot machine gaming is authorized pursuant to s. 23, Art. X, of the State Constitution and ch. 551, F.S., is exempt from the federal law prohibitions regarding the transportation of gaming devices in interstate and foreign commerce.

Racketeering Activity

The bill amends s. 895.02, F.S. to include slot machine gaming in the definition of racketeering activity and unlawful debt. The bill provides that the regulation of slot machine wagering at a licensee's facility is preempted to the state.

Effective Date

The act takes effect upon becoming a law.

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 bill requires the slot machine licensee to pay an annual fee of \$3 million. The tax rate on slot machine revenues is 45 percent.

B. Private Sector Impact:

As described in the Effect of Proposed Changes section of this staff analysis, the bill imposes taxes on slot machine revenues and licensing fees for slot machines and slot machine licensees.

C. Government Sector Impact:

Preliminary estimates indicate that the total tax revenue from 2000 machines at a 45 percent tax rate in the third year of operation is \$353.2 million. The net revenue to the state after estimates for loss to Lottery sales and sales tax loss is \$299.9 million.

The Department of Business and Professional Regulation and the Department of Law Enforcement are currently preparing fiscal analyses on the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

Barcode 745196 by Regulated Industries:

Adds clarifying language to match the language in the constitutional amendment.

Barcode 242042 by Regulated Industries:

Allows for more than one slot machine gaming area in an eligible facility.

Barcode 444698 by Regulated Industries:

Eliminates the “per facility” and the “per day” requirements for the 85 percent payouts for the slot machines. The payout shall be the average for the facility.

Barcode 352638 by Regulated Industries:

Adds clarifying language by replacing “same facility” with “eligible facility.”

Barcode 561902 by Regulated Industries:

Changes the tax structure to a tiered tax system which provides a 35 percent tax on revenue of \$125 million or less; a 40 percent tax on revenue greater than \$125 million, but less than or equal to \$250 million; a 45 percent tax on revenue greater than \$250 million, but less than or equal to \$500 million; and 55 percent on all revenue greater than \$500 million.

Barcode 671164 by Regulated Industries:

Removes the prohibition for local law enforcement employees from working in an off-duty or secondary employment capacity for work at the designated slot machine gaming area or support area.

Barcode 662210 by Regulated Industries:

Includes the agency of a law enforcement officer from being criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

Barcode 832794 by Regulated Industries:

Provides for minority business participation for expansion or renovation of any eligible facility.
(WITH TITLE AMENDMENT)

Barcode 834082 by Regulated Industries:

Provides a severability clause.

Barcode 983674 by Regulated Industries:

Allows a current valid pari-mutuel occupational license holder to be eligible for a slot machine occupational license upon the effective date of the act until such time as rules have been adopted and the pari-mutuel licensee has been provided reasonable opportunity to comply with the rules.