

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 1126

INTRODUCER: Senator Ring

SUBJECT: Dept. of Gaming Control/Government Reorganization

DATE: March 24, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bedford	Imhof	RI	Pre-meeting
2.			CJ	
3.			GO	
4.			FT	
5.			GA	
6.				

I. Summary:

This bill creates the Department of Gaming Control using a type two transfer as defined in s. 20.06(2), F.S. The bill transfers and reassigns divisions, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, statutory powers or other funds for the administration from the Department of Lottery, the Department of Business and Professional Regulation, the Florida Department of Law Enforcement and the Department of Legal Affairs to the Department of Gaming Control. The Department is headed by a new five-member Gaming Commission with its members to be appointed by the Governor and confirmed by the Senate.

This bill creates a regulatory structure for skill-based games being operated in arcade amusement centers and truck stops, operating a minimum of six functional diesel fuel pumps. The bill changes definitions, authorizes rulemaking and provides for minimum rules, authorizes investigations, provides for license fees and revenue taxes, and provides for penalties.

This bill substantially amends ss. 11.905, 20.165, 24.103, 24.104, 24.105, 24.107, 24.108, 24.109, 24.111, 24.112, 24.113, 24.114, 24.115, 24.1153, 24.116, 24.117, 24.118, 24.119, 24.120, 24.121, 24.1215, 24.122, 24.123, 24.124, 112.313, 120.80, 213.053, 215.20, 215.22, 215.422, 287.045, 455.116, 550.002, 550.0115, 550.01215, 550.0235, 550.0251, 550.0351, 550.054, 550.0651, 550.0745, 550.0951, 550.09511, 550.09512, 550.09514, 550.09515, 550.105, 550.1155, 550.125, 550.135, 550.155, 550.1648, 550.175, 550.1815, 550.24055, 550.2415, 550.2614, 550.26165, 550.2625, 550.26352, 550.2704, 550.334, 550.3355, 550.3551, 550.3605, 550.3615, 550.375, 550.495, 550.505, 550.5251, 550.625, 550.6305, 550.6308, 550.70, 550.902, 550.907, 551.102, 551.103, 551.104, 551.1045, 551.105, 551.106, 551.107, 551.108, 551.109,

551.112, 551.114, 551.117, 551.118, 551.121, 551.122, 551.123, 616.09, 616.241, 849.086, 849.094, 849.161, 943.0311, F.S.

This bill creates s. 20.318, F.S. and undesignated sections of law.

This bill repeals s. 20.317, F.S.

II. Present Situation:

Department of the Lottery

In 1986, Florida voters approved a constitutional amendment, passed by a two-to-one margin authorizing the state to operate a lottery. Governor Bob Martinez and the Florida Legislature established an education Lottery dedicated to “maximize revenues to education to allow the people of Florida to benefit from significant additional moneys while providing the best Lottery games available.” The 1987 Legislature subsequently enacted ch. 87-65, L.O.F., codified at ch. 24 F. S., known as the Florida Public Education Lottery Act. The act created the Department of Lottery and charged it with operating “as much as possible in the manner of an entrepreneurial business to generate significant additional funds for education in a manner consonant with the dignity of the state and welfare of its citizens.”

According to the Florida Lottery, the agency has fully-funded more than one million Bright Futures Scholarships for more than 354,000 students in the state, and also has contributed to K-12 programs, community colleges and state universities, workforce education programs and other state student financial aid. Additionally, the Lottery has guaranteed bonds for school construction and maintenance as part of the Classrooms First and Classrooms for Kids program.

On January 12, 2008, the Florida Lottery kicked off its 20th anniversary. Since inception, the Florida Lottery has contributed more than \$18 billion to the Educational Enhancement Trust Fund (EETF). Over the past 20 years, more than 1,045 lottery players have become millionaires and millions more have won smaller prizes, with prize payments totaling more than \$26.5 billion as of December 31, 2007.

Division of Pari-Mutuel Wagering

The Division of Pari-Mutuel Wagering (the division) is a program area within the Department of Business and Professional Regulation (DBPR). From 1932 to 1969 Florida’s pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within the Department of Business Regulation.¹ In 1993, the Department of Business Regulation became the Department of Business and Professional Regulation.² The mission of the Division of Pari-mutuel Wagering is the efficient, effective and fair regulation of authorized gaming at pari-mutuel facilities in Florida.³

The division collects revenue from the following:

¹ Chapter 69-106, L.O.F.

² Chapter 93-220, L.O.F.

³ <http://www.myflorida.com/dbpr/pmw/index.html> (last viewed March 23, 2008).

- Taxes and fees from the operation of pari-mutuel events;
- Occupational license fees from businesses and individuals associated with a facility;
- Cardroom license fee of \$1,000 per table;
- 10% tax on cardroom gross receipts;
- \$3 million annual slot machine operating license fee from each slot facility;
- 50% tax on slot machine revenue; and
- \$250,000 compulsive and addictive gambling prevention program fee.

The division is funded by the Pari-Mutuel Wagering Trust Fund and has a \$16.7 million operating budget for FY07/08:

- \$9.3 million for the regulation of pari-mutuel wagering and cardrooms; and
- \$7.4 million for the regulation of slot operations (Approximately \$3 million is transferred to FDLE).

The division has 106 full time positions:

- 67 full time positions for the regulation of pari-mutuel wagering and cardrooms; and
- 39 full time positions for the regulation of slot machine gaming.

The division provides oversight to:

- 38 Licensed permitholders:
 - 18 Greyhound
 - 4 Thoroughbred
 - 1 Harness
 - 8 Jai-Alai
 - 1 Track offering limited intertrack wagering and horse sales
 - 6 Quarterhorse (which are not operating at this time) and 6 pending applications
- 18 Cardrooms operating at pari-mutuel facilities
- 3 Slot facilities located in Broward County pari-mutuel facilities
 - There is a fourth slot facility authorized in Broward County and three authorized in Miami-Dade County.

Greyhound racing was authorized in Florida in 1931.⁴ Betting is permitted on the outcome of the races around an oval track. The greyhounds typically chase a “lure,” which is usually a mechanical hare or rabbit. Racing greyhounds are those which are bred, raised, or trained to be used in racing at a pari-mutuel facility and are registered with the National Greyhound Association.⁵

Horse Racing, like greyhound racing, was also authorized in the State of Florida in 1931. Currently, the state authorizes three forms of horse racing classes for betting; thoroughbred,

⁴ *Deregulation of Intertrack and Simulcast Wagering at Florida’s Pari-Mutuel Facilities*, Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.

⁵ Section 550.002(29), F.S.

harness, and quarter horse racing. Florida currently has approximately 600 horse farms throughout the state which generate a direct economic impact of approximately \$3 billion.⁶

Thoroughbred racing involves only horses specially bred and registered by certain bloodlines. The thoroughbred industry is highly regulated and specifically overseen by national and international governing agencies. Thoroughbred horses are defined as “a purebred horse whose ancestry can be traced back to one of three foundation sires and whose pedigree is registered in the American Stud Book or in a foreign stud book that is recognized by the Jockey Club and the International Stud Book Committee.”⁷ Pari-mutuel betting is allowed on the outcome of the race which runs typically from one mile to one and one-quarter of a mile.⁸

Harness racing in the State of Florida is currently only permitted at the Pompano Park facility. Harness racing uses standardbred horses, which are a “pacing or trotting horse ... that has been registered as a standardbred by the United States Trotting Association” (USTA) or by a foreign registry whose stud book is recognized by the USTA.⁹

Quarter horse racing is currently legal in the State of Florida, but at the present time there are six valid permits that are not in operation.¹⁰ Quarter horses are defined as those developed in the western United States which are capable of high speed for a short distance.¹¹ They are registered with the American Quarter Horse Association. Quarter horse racing is over a much shorter distance than either the thoroughbred or harness race classes with races only permitted at less than 870 yards. Since February 1, 2008, the division has received six new quarterhorse permit applications.

Jai Alai is a game originating from the Basque region in Spain played in a fronton¹² in which a ball is hurled through the court and points are assessed based on legal throws and catches. Jai Alai was first permitted in 1935. Florida is now the only state where Jai Alai is currently played.

Slot Machines - During the 2004 General Election, the electors approved Amendment 4 to the State Constitution, codified as s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005. The electors approved slot machines at the pari-mutuel facilities in Broward County, but the measure was defeated in Miami-Dade County. Under the provisions of the amendment, four pari-mutuel facilities are eligible to conduct slot machine gaming in Broward County: Gulfstream Park Racing Association (a thoroughbred permitholder), The Isle Casino and Racing at Pompano Park (a harness racing permitholder), Dania Jai Alai (a jai alai permitholder), and Mardi Gras Race Track and Gaming Center (a greyhound permitholder).

⁶ Estimate provided by the representative of the Florida Breeders' and Owners' Association. The Department of Agriculture and Consumer Services has estimated that direct impact of the entire horse industry, comprising racing, showing, recreation, and other activities, is approximately \$3 billion.

⁷ Section 550.002(35), F.S.

⁸ Anything over 870 yards is considered a thoroughbred racing distance.

⁹ Section 550.002(33), F.S.

¹⁰ As of February 14, 2008.

¹¹ Section 550.002(28), F.S.

¹² “A building or enclosure that contains a playing court with three walls designed and constructed for playing the sport of Jai Alai or pelota,” Section 550.002(10), F.S.

Legislation was passed during the 2005 Special Session B, HB 1B, ch. 2005-362, L.O.F., that implemented Amendment 4 pursuant to the provisions of the constitutional amendment. The Division of Pari-Mutuel Wagering (division or DPMW) of the Department of Business and Professional Regulation (department or DBPR) is charged with regulating the operation of slot machines in the affected counties. Of the four eligible in Broward County, all are operating except Dania Jai Alai.

On January 29, 2008, another referendum was held under the provisions of Amendment 4, in which the slot machines in Miami-Dade County were approved. Three additional pari-mutuel facilities are now eligible to conduct slot machine gaming in Miami-Dade County: Miami Jai-Alai (a jai-alai permitholder), Flagler Greyhound Track (a greyhound permitholder), and Calder Race Course (a thoroughbred permitholder).

The division is divided into 5 functional areas:

- The Director's Office
 - Provides general oversight and administration of the division
 - Provides oversight to the division budget, and accounts for and safeguards state revenues
- The Office of Auditing
 - Conducts audits of permitholders to ensure integrity of wagering activity
- The Office of Investigations
 - Examines possible rule, statute, or criminal violations
 - Background and criminal history checks of applicants
- The Office of Operations
 - Issues operating licenses to permitholders, and occupational licenses to businesses and individuals
 - The primary regulator of pari-mutuel operations at pari-mutuel facilities
- The Office of Slot Operations
 - The primary regulator of slot machine operations at state pari-mutuel wagering facilities

In addition, s. 551.118(2), F.S., requires the division to contract with a vendor for the prevention of compulsive and addictive gambling. The division currently has a contract with the Florida Council on Compulsive and Addictive Gambling. The program is funded from an annual nonrefundable regulatory fee of \$250,000 paid by each slot machine licensee. The division does not have any employees with specific responsibilities regarding the implementation of a compulsive and addictive gambling program for slot machine licensees.

Section 551.114(5), F.S., requires a slot machine licensee to provide adequate office space at no cost to the division and the Department of Law Enforcement for the oversight of slot machine operations. The division must adopt rules establishing the criteria for adequate space, configuration, and location and needed electronic and technological requirements for office space required by this subsection.

Arcade Games

Numerous arcade games are currently in operation throughout the State of Florida. Unfortunately, no concrete information may be formulated as these machines are not required to be registered or regulated by any specific state entity. It is estimated that between 30,000 and 50,000 of these amusement machines are operated in the state.¹³

Section 849.161, F.S., provides an exception to the slot machine prohibition in chapter 849, F.S.¹⁴ Amusement games and machines are authorized in an arcade amusement center¹⁵ that operate by means of the insertion of a coin and which, by application of skill, the person playing the game receives points or coupons redeemable for merchandise only, excluding cash and alcoholic beverages. The value of the prize cannot exceed 75 cents on any game played.¹⁶

Similar provisions govern retail dealers who operate truck stops with a minimum of six functional diesel fuel pumps. The merchandise for these machines is limited to “noncash prizes, toys, novelties, and Florida Lottery products, excluding alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played.”¹⁷

Section 849.161(1)(b), F.S., also provides an exemption for

coin-operated game or device designed and manufactured only for bona fide amusement purposes which game or device may by application of skill entitle the player to replay the game or device at no additional cost, if the game or device: can accumulate and react to no more than 15 free replays; can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay; can make no permanent record, directly or indirectly, of free replays; and is not classified by the United States as a gambling device . . .

Type Two Transfers

Section 20.104(2), F.S., provides for a type-two transfer:

A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished.

¹³ Information supplied to the Regulated Industries Committee by the Department of Revenue.

¹⁴ See ss. 849.15 and 849.16, F.S.

¹⁵ Amusement center is defined in s. 849.161(2), F.S. as “a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.”

¹⁶ Section 849.161(1)(a)1., F.S.

¹⁷ Section 849.161(1)(a)2., F.S.

(a) Any agency or department or a program, activity, or function thereof transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred, unless otherwise provided by law. The transfer of segregated funds must be made in such a manner that the relation between program and revenue source as provided by law is retained.

(b) Unless otherwise provided by law, the head of the agency or department to which an existing agency or department or a program, activity, or function thereof is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions, to the extent authorized in this chapter.

(c) Unless otherwise provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

III. Effect of Proposed Changes:

Section 1. Creates an undesignated section of law transferring the statutory powers, duties and functions, records, personnel, property, and unexpended balances within the Division of Pari-mutuel Wagering to the Division of Gambling Oversight of the newly created Department of Gaming Control by type two transfers. This section also includes similar transfers for the Department of the Lottery, Department of Law Enforcement, and Department of Legal Affairs to the new gaming agency. The section also transfers several trust funds to the new agency.

Section 2. Amends s. 11.905, F.S., providing that the new Department of Gaming Control be reviewed under the “Florida Government Accountability Act” by July 1, 2012.

Section 3. Amends s. 20.165, F.S., deleting the Division of Pari-Mutuel Wagering from the Department of Business and Professional Regulation.

Section 4. Repeals s. 20.317, F.S., eliminating the creation of the Department of the Lottery.

Section 5. Creates s. 20.318, F.S., establishing the Department of Gaming Control. The bill creates a Gaming Commission composed of five members appointed by the Governor, subject to confirmation by the Senate. The responsibilities of the five commission members appointed by the Governor and approved by the Senate include:

- Serving as agency head for the Department of Gaming Control; and
- Hiring and firing of the executive director and general counsel.

The Department of Gaming Control within the Gaming Commission will be comprised of the following divisions and bureaus:

- Division of Lottery
- Division of Licensing and Enforcement

- The Bureau of Licensing
- The Bureau of Revenue and Audit
- The Bureau of Investigation
- The Bureau of Enforcement
- The Bureau of Prosecution
- Division of Gambling Oversight
 - The Bureau of Pari-Mutuel Wagering
 - The Bureau of Cardrooms
 - The Bureau of Slot Machines
 - The Bureau of Charitable Gaming
 - The Bureau of Compulsive Gambling

The Department of Gaming Control is required to provide advisory opinions when requested by any law enforcement official, state attorney, or entity licensed by the department relating to the application of state gaming laws with respect to whether a particular act or device constitutes legal or illegal gambling under state laws and administrative rules. Any such person or entity, acting in good faith upon an advisory opinion that they requested and received, is not subject to any criminal penalty provided for under state law for illegal gambling. The opinion, until amended or revoked, is binding on any person or entity who sought the opinion or with reference to whom the opinion was sought, unless material facts were omitted or misstated in the request for the advisory opinion. The department may adopt rules regarding the process for securing an advisory opinion and may require the submission of any potential gaming apparatus for testing by a licensed testing laboratory to prove or disprove its compliance with state law before an opinion is issued.

The department will serve as the state compliance agency that is responsible for oversight responsibilities under any tribal gaming compact entered into by the state.

The department may employ law enforcement officers within the Bureau of Enforcement to enforce any criminal law and to conduct investigations. Each law enforcement officer must meet certain criteria as outlined in the bill.

Section 6. Amends s. 24.103, F.S., revising certain definitions. “Department” means the Department of Gaming Control. “Division” in this chapter means the Division of the Lottery. “Commission” means the Gaming Commission.

Sections 7 through 28. Amends several sections to reflect the change from the Department of the Lottery to the Division of Lottery and inserting the Department of Gaming Control where appropriate.

Section 29. Amends s. 120.80, F.S., deleting parts of subsection (4) as it applies to the Division of Pari-Mutuel Wagering within the DBPR and adds the same language in a new subsection (18) applying to the Department of Gaming Control.

Section 30. Amends s. 213.053, F.S., changing department to division and adding the Department of Gaming Control.

Section 31. Amends s. 215.20, F.S., deleting the pari-mutuel trust fund from the DBPR and adding the pari-mutuel trust fund administered within the Division of Gambling Oversight to contribute to the General Revenue Fund.

Sections 32 through 34. Amends these sections to change department to division and add the Department of Gaming Control.

Section 35. Amends s. 455.116, F.S., deleting the Pari-mutuel Wagering Trust Fund from the DBPR.

Section 36. Amends s. 550.002, F.S., changing definitions. “Department” means the Department of Gaming Control. For purposes of this Act, “division” means Division of Gambling Oversight within the Department of Gaming Control. “Bureau” means the Bureau of Pari-mutuel Wagering within the Division of Gambling Oversight of the Department of Gaming Control. “Commission” means the Gaming Commission.

Sections 37 through 77. Amends several sections conforming the statutes to the new definitions and corrects cross references in ch. 550, F.S.

Section 78. Amends s. 550.902, F.S., authorizing the Department of Gaming Control to participate in the Interstate Compact on Licensure of Participants in Pari-mutuel Wagering.

Section 79. Amends s. 550.907, F.S., designating that the official from Florida for the “compact committee” be appointed by the Gaming Commission.

Section 80. Amends s. 551.102, F.S., changing definitions. “Bureau” means Bureau of Slot Machines within the Division of Gambling Oversight of the Department of Gaming Control. “Division” means Division of Gambling Oversight of the Department of Gaming Control.

Sections 81 through 95. Amends several sections conforming the statutes to the new definitions and corrects cross references in ch. 551, F.S.

Section 96. Amends s. 616.09, F.S., changing the Department of Legal Affairs to the Bureau of Prosecution of the Division of Licensing and Enforcement within the Department of Gaming Control.

Section 97. Amends s. 616.241, F.S., specifying that the enforcement of gambling violations is the responsibility of the Department of Gaming Control.

Section 98. Amends s. 849.086, F.S., changing and conforming definitions. “Division” means the Division of Gambling Oversight of the Department of Gaming Control. “Bureau” means the Bureau of Cardrooms within the Division of Gambling Oversight of the Department of Gaming Control.

Section 99. Amends s. 849.094, F.S., making the section inapplicable to the actions or transactions regulated by the Department of Gaming Control.

Section 100. Amends s. 849.161, F.S., adding together arcade amusement centers and truck stops, operating a minimum of six functional diesel fuel pumps to be treated the same. The bill adds the insertion of “or other currency” in the definition of amusement game. The bill adds that points or coupons may be exchanged for merchandise limited to noncash prizes, toys, novelties, and Florida Lottery products. The bill deletes language which separated the truck stops from the arcade amusement centers.

Subsection (2) amends the definitions of “Arcade amusement center” by adding “licensed by the department.” “Application of skill” means that the playing public may attain, through the exercise of skill or judgment, a better measure of success in playing the game than could be mathematically expected on the basis of random chance alone. “Department” means the Department of Gaming Control.

Subsection (3) authorizes the department to adopt rules necessary to implement, administer, and regulate skill-based gaming as authorized in this section and those rules must include:

- Technical requirements, qualifications, and procedures necessary to receive a skill-based gaming license;
- Procedures for scientifically testing and evaluating skill-based machines for compliance with this chapter. The division can contract with an independent testing laboratory to conduct the necessary testing. A licensee may not own or control an independent testing laboratory. The testing laboratory must be approved by the division;
- Procedures relating to machine revenues, including verifying and accounting for such revenues, auditing, and collecting taxes and fees consistent with this section;
- Procedures for regulating, managing, and auditing the operation, financial data, and program information relating to skill-based machine gaming;
- Procedures for requiring licensees to maintain specified records and reports; and
- Minimum standards for security;

Subsection (4) authorizes the department to conduct investigations necessary to fulfill its responsibilities under this section.

Subsection (5) gives the department and local law enforcement concurrent jurisdiction to investigate criminal violations of this chapter and any other criminal violation of law occurring at the facilities of a licensee, and such investigations may be conducted in conjunction with the appropriate state attorney. This would allow the department to conduct criminal investigations for violations of chapter 849, F.S.

Subsection (6) allows the department and local law enforcement unrestricted access to a licensee’s facility at all times. The department and local law enforcement can:

- Inspect and examine premises where skill-based machines are offered for play;
- Inspect skill-based machines, related equipment and supplies;
- Collect taxes, assessments, fees, and penalties;

- Deny, revoke, suspend, or place conditions on any license violating provisions of this chapter or applicable rules; and
- Revoke or suspend the license of anyone who is no longer qualified or who is found to have not been qualified at the time of application.

Subsection (7) clarifies that this section does not:

- Prohibit the department or law enforcement from conducting criminal investigations occurring at a licensee's facility;
- Restrict access to the licensee's facility by the department or law enforcement; and
- Restrict access by the department and law enforcement to information and records necessary to the investigation of criminal activity.

Subsection (8) authorizes an annual license fee, with the first fee due upon the submission of the initial application and subsequent fees due on the anniversary date of the issuance of the initial license. Before January 1, 2009, the Division of Licensing and Enforcement will evaluate the license fee and make recommendations to the President of the Senate and the Speaker of the House of Representatives regarding the optimum fee to support the regulatory program. This will be deposited into the Pari-mutuel Wagering Trust Fund of the department.

Subsection (9) authorizes a tax rate on skill-based machine revenues at each facility, which shall be 15 percent. This will be deposited into the Florida Gaming Trust Fund and subject to annual appropriation by the Florida Legislature.

Subsection (10) stipulates the time and manner in which revenue taxes are to be paid.

Subsection (11) authorizes a \$10,000 administrative penalty for each day the tax payment is not paid. The penalties will be deposited into the Florida Gaming Trust Fund. If any slot machine licensee fails to pay penalties imposed by the division, then the division may suspend, revoke, or refuse to renew the license of the slot machine licensee.

Subsection (12) allows the division to require electronic funds transfer for the payment of taxes, fees, fines, and assessments.

Section 101. Amends s. 943.0311, F.S. changing the Department of the Lottery to the Department of Gaming Control.

Section 102. Provides an effective date of July 1, 2008, if Senate Bill _____, or similar legislation creating the Florida Gaming Trust Fund is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other

The license fee for amusement arcade centers is not established or capped in the bill. This may be an unlawful delegation of legislative authority to the agency. The separation-of-powers doctrine prevents the Legislature from delegating its constitutional duties. *Board of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979). The Legislature must promulgate standards sufficient to guide administrative agencies in the performance of their duties. *Avatar Development Corporation v. State*, 723 So.2d 199 (Fla. 1998). In *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978), the Florida Supreme Court explained what safeguards were required to support a proper delegation of power.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference established the following estimate. There is a license fee to be paid initially and annually, with the amount to be determined by the department. The department is given direction to evaluate the license fee by January 1, 2009 and make recommendations to the Legislature concerning the optimum level of fees appropriate to support the regulatory program. It is not clear whether the license fee is per account or per location. As of 1/1/08, there were 3,540 accounts covering 9,390 locations and 57,004 machines statewide.

The consensus estimate was adopted on March 21, 2008. The conference adopted an estimate assuming 50% of the known machines would qualify.

	FY 2008-09 Annualized (in millions)
General Revenue Service Charge	1.3
State Trust Funds	17.0
Total State Impact	18.3
Total Local Impact	
Total Impact	18.3

B. Private Sector Impact:

There is an increased revenue tax on amusement arcade skill based machines of 15 percent. There is a license fee for amusement arcade centers which will be assessed to pay for the regulatory scheme that is not established in the bill.

C. Government Sector Impact:

For all of the agencies, a type-two transfer assumes that the positions and budget will be transferred and remain the same. However, with the new structuring workload and positions may differ. This fiscal impact is indeterminate at this time.

For the Department of the Lottery, at this time the fiscal impact cannot be precisely determined. However, the Lottery believes that a new governance structure that is not solely focused on marketing, sales and business development may impede its ability to maximize sales and operational efficiencies.

For the Department of Business and Professional Regulation the affect on workload and staffing is indeterminate. The Division of Pari-Mutuel Wagering utilizes a system called LicenseEase for the issuance of pari-mutuel, cardroom, and slot machine operating licenses; occupational licenses; and administrative complaints. Other entities within the Department of Business and Professional Regulation utilize this system. In addition, the division utilizes a revenue system called the Central Management System. This system is made specifically for the division and is only used by the division. If the bill is passed the Department of Gaming Control may need to develop a new licensing system. In addition, the contract for the revenue system is between the Department of Business and Professional Regulation and Accenture. A new contract may need to be negotiated or a new revenue system may need to be developed as a result of this transition.

According to DBPR, the entire Division of Pari-Mutuel Wagering will need to be dismantled. This involves building extract files to pull data from the Single Licensing System and PMW's Central Management System which manages PMW tax compliance. The Division of Technology will need to hire staff from contractors who are familiar with these systems. This would be a non-recurring contracted services expense of \$191,462.

After the new agency is formed, DBPR will receive the requirements for the extract file formats needed to load data into the data systems established by the Department of Gaming Control. The Division of Technology cannot begin work until these requirements have been defined.

For the Department of Law Enforcement the fiscal impact is indeterminate.

The impact of the revenues from the amusement arcade centers is not known at this time.

It is unclear if there will be a fiscal impact for the provision that establishes law enforcement personnel within the new department. Currently, neither the division nor the Department of the Lottery have sworn officers.

VI. Technical Deficiencies:

An amendment has been drafted to insert the tied trust fund bill, SB 1166 in the contingent effective date section.

VII. Related Issues:

1) The bill does not provide any regulatory responsibilities for the bureaus within the Division of Licensing and Enforcement with the exception to the Bureau of Enforcement. In addition, the bill does not provide regulatory responsibilities for the Bureau of Charitable Gaming or the Bureau of Compulsive Gambling. The following statutes relate to charitable gaming and may need to be amended to create the Bureau of Charitable Gaming:

- Section 849.0935, F.S., relating to charitable, nonprofit organizations, drawing of chance; and
- Section 849.0931, F.S., relating to bingo and authorizes charitable, nonprofit, or veterans' organization to conduct bingo games or instant bingo.

2) Department of Revenue is responsible for collecting taxes and fees for the operation of coin-operated amusement machines. The bill does not provide for any transfer of responsibilities or personnel from the Department of Revenue or amend sections in ch. 212, F.S., that relate to the tax collection and fees associated with coin-operated amusement machines which could result in double taxation of the same activity.

3) Section five of the bill amends s. 20.318(1), F.S., to appoint the Department of Gaming Control as the State Compliance Agency responsible for the oversight of any tribal gaming compact. However, it does not appoint a division or a bureau within the Department of Gaming Control to assume such responsibilities.

4) Fingerprints for criminal history check are submitted by slot occupational applicants, and then submitted to the Florida Department of Law Enforcement (FDLE) for state processing. Then FDLE forwards the fingerprints to the Federal Bureau of Investigations for national processing. FDLE invoices the Division of Pari-Mutuel Wagering for the cost associated for processing the fingerprints. The amendments to s. 551.106(7), F.S., do not accurately convey the fingerprinting process. Although it is still indeterminate which functions of FDLE will be transferred to the Division of Licensing and Enforcement, the verification of fingerprints would most likely remain with FDLE rather than the Division of Licensing and Enforcement.

5) Section 849.086(2), F.S., redefines the term "cardroom operator" as a licensed pari-mutuel permitholder which holds a valid permit and license issued by the Bureau of Cardrooms. However, based on the amendments to s. 550.054, F.S., and s. 550.01215, F.S., the Bureau of Pari-Mutuel Wagering would be responsible for issuing a pari-mutuel permit and license.

6) Section 849.161, F.S., pertaining to "Amusement Games or Machines" is amended to add subsection 10, which requires "slot machine licensees" to remit to the Division of Licensing and Enforcement payment for the tax on slot machine revenue. Since the amendment does not occur in ch. 551, F.S., "slot machine licensee" should be changed to "skill-based machine operator".

Subsection 11 also states “slot machine licensee” and it should be “skill-based machine operator.”

7) While the bill transfers the personnel and functions of the Division of Pari-mutuel Wagering to the newly created Department of Gaming Control, the bill does not transfer the personnel and functions of the Pari-mutuel Wagering Legal Section within the Department of Business and Professional Regulation’s Office of the General Counsel. This section includes the four attorneys, two administrative assistants, and a law clerk position that currently provide direct legal support to the Division of Pari-mutuel Wagering.

8) Section. 551.108, F.S., establishes several prohibitions to prevent division employees from owning or holding interest in a slot licensee, as well as wagering on slot games. By removing the term division and replacing it with Bureau of Slot Machines, the prohibitions set forth in s. 551.108, F.S., will not apply to all employees of the Department of Gaming Control.

9) Department of Gaming Control officers and employees would be permitted to purchase lottery tickets. Currently, no officers or employees of the Lottery (department) can purchase tickets. Under the bill, only officers and employees of the Lottery (division) are prohibited from purchasing tickets. By inference, non-Lottery officers and employees of the Department of Gaming Control, including the Division of Licensing and Enforcement and members of the Gaming Commission itself, would be allowed to purchase tickets. This has integrity implications.

10) There may be a potential conflict as to which monies are to be deposited into the Pari-Mutuel Wagering Trust Fund:

- Section 551.106(1)(a), F.S., requires the \$3 million annual license fee paid by each slot machine license fee to be deposited in the Pari-Mutuel Wagering Trust Fund, to be used for the regulation of slot machines;
- Section 849.16 1, (8)(a), F.S., requires the license fee for skill based games be deposited into the Pari-Mutuel Wagering Trust Fund;

However, a tied bill, SB 1166, creates the Florida Gaming Trust Fund within the Department of Gaming Control, and requires the fund to provide funding for the regulation of skill-based gaming and slot machine gaming. The bill does not specifically require these monies be deposited in the Florida Gaming Trust Fund.

11) In 2005, The Florida legislature authorized 39 positions for the Florida Department of Law Enforcement (FDLE) to utilize toward the purpose of investigation and enforcement within the slot machine gaming areas of Broward County’s pari-mutuel facilities. During the following two years, personnel were assigned within the three facilities that have opened their slot machine gaming areas.

With the passage of this bill, positions and responsibilities would be removed from FDLE and transferred to the new agency as defined in the excerpt below:

Section 1. Transfers.

(5) All of the statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Law Enforcement regarding the regulation of slot machine gaming are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Division of Licensing and Enforcement of the Department of Gaming Control.

Chapter 551, F.S. is amended to transfer the power, responsibility and authority formerly with the FDLE to the Department of Gaming Control. According to FDLE, removal of the Gaming Enforcement Unit will return FDLE Miami Regional Operation Center to the core mission defined in the investigative strategy.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.