

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 Governmental Operations Committee

BILL: CS/SB 586

INTRODUCER: Regulated Industries Committee and Senator Jones

SUBJECT: Lottery Revision

DATE: March 20, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Aubuchon</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill maintains the s. 24.113, F.S. requirement that 15 percent of all Lottery retailers must be minority retailers, but deletes the provision that no more than 35 percent of those minority retailers can be the same type of minority retailer.

The bill also provides that debit cards may be used when purchasing on-line and scratch-off tickets. The bill clarifies that if credit or charge cards are used when purchasing lottery tickets the consumer additionally must have purchases of goods or services of at least \$20. It does not provide any restriction when the consumer uses a debit card.

The bill removes the cost of tickets and the distribution of tickets from administrative expenses. It excludes vendor service fees from the funds deposited into the Operating Trust Fund in the operation of the department.

This bill amends sections 24.113, 24.118, 24.120, and 24.121, Florida Statutes.

II. Present Situation:

The Department of the Lottery is authorized by Art. X, s. 15, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, provides legislative purpose and intent in regard to the lottery:

(1) The purpose of this act is to implement s. 15, Art. X of the State Constitution in a manner that enables the people of the state to benefit from significant additional moneys for education and also enables the people of the state to play the best lottery games available.

(2) The intent of the Legislature is:

(a) That the net proceeds of lottery games conducted pursuant to this act be used to support improvements in public education and that such proceeds not be used as a substitute for existing resources for public education.

(b) That the lottery games be operated by a department of state government that functions as much as possible in the manner of an entrepreneurial business enterprise. The Legislature recognizes that the operation of a lottery is a unique activity for state government and that structures and procedures appropriate to the performance of other governmental functions are not necessarily appropriate to the operation of a state lottery.

(c) That the lottery games be operated by a self-supporting, revenue-producing department.

(d) That the department be accountable to the Legislature and the people of the state through a system of audits and reports and through compliance with financial disclosure, open meetings, and public records laws.

Section 24.104, F.S., requires the Department of the Lottery to operate the state lottery “so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens.”

The Office of the Auditor General noted in its latest financial audit report of the department that:

Section 24.113, Florida Statutes, requires that 15 percent of the Lottery’s retailers shall be minority business enterprises, as defined in Section 288.703, Florida Statutes; however, no more than 35 percent of such retailers shall be owned by the same type of minority person, as defined by Section 288.703, Florida Statutes. Our audit disclosed that as of September 21, 2007, retailers comprising one minority type totaled 62 percent of the total number of minority retailers. A similar finding has been included in previous Auditor General reports.

Recommendation: We recommend that the Lottery continue to take steps to resolve this finding.¹

The department has noted in its responses to the Auditor General’s findings on this issue that s. 24.113(1), F.S., creates a “conflict” by including both a floor and a ceiling. According to the

¹ *Financial Audit of the State of Florida Department of the Lottery for the Fiscal Year Ended June 30, 2007*, Report No. 2008-069, Office of the Auditor General, Florida Legislature, January 2008. The Auditor General has made similar finding in reports 2007-093, 2006-098, 2005-089, and 2004-061.

department, the minority effects were originally introduced into the Florida Lottery statutes to ensure that there would be no discrimination against minority business owners as Lottery retailers.

Currently, lottery tickets are available for purchase by a credit or charge card but s. 24.118, F.S., does allow the use of a debit card. A consumer may use a credit or charge card to purchase lottery tickets when additional goods or services are purchased from the Lottery retailer when the amount exceeds \$20.

Debit cards are distinct from credit or charge cards in their direct correlation with how a transaction is made. Whereas a credit or charge card places a purchase on a line of credit with a lending institution, a debit card directly deducts moneys from a consumer's bank account. The purchase is much more like a cash or check purchase through electronic means which access funds directly from a bank account. The debit purchase will only be made if there is enough money in an account to cover the entire purchase. The debit purchase is directly paid for at the time of the transaction unlike a credit or charge card which does not include a direct purchase and payment.

Sections 24.120 and 24.121, F.S., currently classify "vendor fees," those fees paid to the on-line and scratch-off gaming vendors for tickets, and retailer incentives as administrative expenses. The Florida Lottery pays the costs of tickets and distribution of tickets from the Operating Trust Fund. According to the department, these fees are expenses directly tied to sales, and as such, should be separate from exemption as administrative expenses.

III. Effect of Proposed Changes:

The bill maintains the s. 24.113, F.S. requirement that 15 percent of all Lottery retailers must be minority retailers, but deletes the provision that no more than 35 percent of those minority retailers can be the same type of minority retailer.

The bill amends s. 24.118, F.S., to clarify the use of a credit or charge card and authorize the use of debit cards for purchasing of Florida Lottery tickets. Although the \$20 additional goods or service purchase requirement will remain in effect for consumers using a credit or charge card for Lottery ticket purchase, purchases made with a debit card will not have any such requirements. The electronic transaction of a debit card directly connects with a consumer's bank account and only allows for the purchase if there are enough available funds in the bank account.

The bill will amend ss. 24.120 and 24.121, F.S., to remove vendor fees paid to ticket service providers, the costs of tickets and the distribution of tickets as administrative expenses. According to the department, these costs are expenses directly tied to sales, and therefore should not be paid to retailers from the Operating Trust Fund as administrative expenses of the department.

The bill will take effect July 1, 2008.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 287.09451, F.S., grants preferences to minority business enterprises entering into contracts with state agencies. A Federal District Court held in 2004 that the minority spending goals of the statute were not narrowly tailored to serve a compelling governmental interest, and consequently violated the Equal Protection Clause of the Fourteenth Amendment. The court declared the statute unconstitutional.²

Section 24.113(1), F.S., amended by this bill, requires that 15 percent of the retailers of lottery tickets must be minority business enterprises. If challenged, this provision could be found unconstitutional, if a court were to find that it was not narrowly tailored to serve a compelling governmental interest. The third sentence of s. 24.113(1), F.S., encourages the department to meet the minority business enterprise procurement goals of s. 287.09451, F.S., which has been declared unconstitutional.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Lottery retailers will no longer be allowed to use the costs of tickets and distribution of tickets as an administrative expense.

C. Government Sector Impact:

The costs of tickets and distribution of tickets will no longer be paid from the Operating Trust Fund of the Florida Lottery.

² *Florida A.G.C. Council, Inc. v. Florida*, 303 F.Supp.2d 1307, 1316-17 (N.D.Fla.2004)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Regulated Industries on February 19, 2008:

The original bill provided that it is the intent of the Legislature to revise laws relating to Florida Lottery. Please see the Effect of Proposed Changes section for the differences between the committee substitute and the prior version of the bill.

- B. **Amendments:**

None.