

**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 Policy and Steering Committee on Ways and Means

**BILL:** CS/SB 640

**INTRODUCER:** Regulated Industries Committee and Senator Jones

**SUBJECT:** Pari-mutuel Wagering

**DATE:** April 19, 2010      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	<b>Fav/CS</b>
2.	Frederick	DeLoach	GA	<b>Fav/1 amendment</b>
3.	Frederick	Coburn	WPSC	<b>Pre-meeting</b>
4.			RC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill reduces the number of live games required to constitute a full schedule of live racing or games for specified jai alai frontons. The bill requires a harness horse facility to enter into an agreement governing purses with the Florida Standardbred Breeders and Owners Association before a slot license can be issued or renewed.

The bill also eliminates the tax on handle and cardroom tax payable by non-slot pari-mutuel facilities. If the tax amount paid from slot machine revenues is below the slot machine revenue paid in 2008-2009 threshold plus the amount of taxes that was eliminated in the given year for the tax on handle and cardroom tax, the non-slot pari-mutuels will have to pay a surcharge. The bill requires non-slot pari-mutuel facilities to pay six percent of the gross cardroom receipts for purses and awards instead of four percent.

The Revenue Estimating Conference met on April 16, 2010, and estimated that the bill will have a negative total fiscal impact of \$18 million, as follows.

- \$12 million decrease to the General Revenue Fund.

- \$5 million decrease to the Pari-Mutuel Wagering Trust Fund within the Department of Business and Professional Regulation (department). These funds are utilized to provide for the regulatory operations of the Division of Pari-Mutuel Wagering (division).
- \$1 million decrease in cardroom revenues distributed to local governments.
- The bill provides an effective date of July 1, 2010.

This bill amends the following sections of the Florida Statutes: 550.002, 550.0951, 551.104, and 849.086.

## II. Present Situation:

### Pari-mutuel Wagering

Pari-mutuel wagering is a:

system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes.<sup>1</sup>

The regulation of the pari-mutuel industry is governed by ch. 550, F.S., and is administered by the Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation.

### Types of Pari-mutuels

The pari-mutuel industry in Florida is made up of greyhound racing, different types of horseracing, and jai alai.<sup>2</sup> There are twenty-seven pari-mutuel facilities currently in operation. The industry consists of sixteen greyhound tracks, six jai alai frontons, three thoroughbred tracks, one harness track, and one quarter horse track. Twenty-three of the facilities have cardrooms<sup>3</sup> and five facilities have slot machines.<sup>4</sup>

### Jai Alai

Jai alai is a game originating from the Basque region in Spain,<sup>5</sup> that is played in a fronton,<sup>6</sup> and in which a ball is hurled through a three-walled court and points are assessed based on legal throws and catches. The ball is caught and thrown with a “cesta,” a long, curved wicker scoop

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<sup>1</sup> Section 550.002(22), F.S.

<sup>2</sup> “Jai alai” or “pelota” means a ball game of Spanish origin played on a court with three walls. *See*, s. 550.002(18), F.S.

<sup>3</sup> *See* <http://www.myflorida.com/dbpr/pmw/track.html> (Last visited March 5, 2010).

<sup>4</sup> Gulfstream Park, Mardi Gras Racetrack and Gaming Center, Flagler Dog Track and Magic City Casino, Calder/Tropical, and The Isle Casino and Racing at Pompano Park have slot machine gaming. *See* <http://www.myflorida.com/dbpr/pmw/track.html> (Last visited March 5, 2010).

<sup>5</sup> “The game is called “pelota vasca” in Spain but the Western Hemisphere name of jai alai, which is Basque for “merry festival”, was given when it was introduced in Cuba. This was due to the fact that this game was played at festivals or fiestas in Spain's Pyrenees Mountains for hundreds of years. The game was then played in the open air with the walls of churches being used to bounce the ball on.” *See*, <http://www.jai-alai.info/> and <http://www.fla-gaming.com/history.htm> (Last visited March 8, 2010).

<sup>6</sup> “A building or enclosure that contains a playing court with three walls designed and constructed for playing the sport of jai alai or pelota.” *See*, s.550.002(10), F.S.

strapped to one arm. “Jai-alai came to Cuba from Spain in 1898, and was successfully introduced as a professional game at the Miami Fronton in 1926<sup>7</sup>.” Jai alai was first permitted in Florida in 1935 and it is the only state where the game is currently played. Though the birthplace of jai alai is the Basque Country of Spain, there are more jai-alai frontons in Florida than any place in the world.<sup>8</sup>

**Harness Racing**

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.<sup>9</sup> Currently, only the Pompano Park facility in Florida has a permit for harness racing.

**Full Schedule of Live Racing**

Section 550.002(11), F.S., defines what constitutes a full schedule of live racing. Depending upon the permit type, there may be a different requirement for a full schedule of live racing. Typically, a full schedule of live racing or games requires the conduct of a combination of evening or matinee “performances,” which is defined to mean “a series of events, races, or games performed consecutively under a single admission charge.”<sup>10</sup> A live performance must consist of no fewer than eight races or games conducted live for each of a minimum of three performances each week at the permit holder’s facility.<sup>11</sup>

FULL SCHEDULE OF LIVE RACING OR GAMES	
Type of Facility	Full Schedule Means:
Greyhound Racing	100 live evening or matinee performances
Jai Alai	100 live evening or matinee performances
Harness Racing	100 live regular wagering performances
Thoroughbred Racing	40 live regular wagering performances
Quarter horse Racing	40 live regular wagering performances

Generally a jai alai fronton must conduct 100 performances to constitute a full schedule of games. However, two exceptions exist: (1) For a jai alai permit holder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its facility has been less than \$4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of at least 40 live evening or matinee performances constitutes a full schedule of live games; and (2) If the fronton operates slot machines in its facility, then the conduct of at least 150 performances constitutes a full schedule. Hamilton Jai Alai and Poker does not qualify for the reduced racing schedule of 40 performances.

<sup>7</sup> See <http://www.fla-gaming.com/history.htm> (Last visited March 8, 2010).

<sup>8</sup> *Id.*

<sup>9</sup> Section 550.002(33), F.S.

<sup>10</sup> Section 550.002(25), F.S.

<sup>11</sup> Section 550.002(11), F.S.

## 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 permit holder;
- The Isle Casino and Racing at Pompano Park, a harness racing permit holder;
- Dania Jai Alai, a jai alai permit holder; and,
- Mardi Gras Race Track and Gaming Center, a greyhound permit holder.

Legislation was passed during the 2005 Special Session B, HB 1B, ch. 2005-362, L.O.F., that implemented Amendment 4. The division is charged with regulating the operation of slot machines in the affected counties. Of the four eligible in Broward County, all are operating slot machines except Dania Jai Alai.

On January 29, 2008, another referendum was held in which slot machines in Miami-Dade County were approved. Under the provisions of Amendment 4, three pari-mutuel facilities are now eligible to conduct slot machine gaming in Miami-Dade County:

- Miami Jai-Alai, a jai-alai permit holder;
- Flagler Greyhound Track, a greyhound permit holder; and,
- Calder Race Course, a thoroughbred permit holder.

Of the three eligible in Miami-Dade County, Calder and Flagler are operating slot machines.

## Cardrooms

Pari-mutuel facilities within the state are allowed to operate poker cardrooms under s. 849.086, F.S. A cardroom may be operated only at the location specified on the cardroom license issued by the division and such location may only be where the permit holder is authorized to conduct pari-mutuel wagering activities subject to its pari-mutuel permit. Section 849.086(2)(c), F.S., defines “cardroom” to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations. Instead, such games are played in a non-banking matter, i.e., where the facility has no stake in the outcome. Such activity is regulated by the department and must be approved by ordinance of the county commission where the pari-mutuel facility is located.

In order to renew a cardroom operator license, the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permit holder during either the state fiscal year in which its

initial cardroom license was issued or the state fiscal year immediately prior to the application. If the application is for a harness permit holder, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior to the application. If more than one permit holder is operating at a facility, each permit holder must have applied for a license to conduct a full schedule of live racing.<sup>12</sup> Chapter 2009-170, L.O.F., changed the above requirement to mandate the performance of at least 90 percent of the total number of live races in the initial issuance year or the year prior if the cardroom operator ran a full schedule of live racing in that prior year. That change is not in current law but is before the 2010 Legislature.<sup>13</sup>

### **Taxes**

The division collects taxes on both pari-mutuel wagering activities and on monthly gross receipts from licensed cardrooms.<sup>14</sup> Specifically, each cardroom operator pays a tax to the state of 10 percent of the cardroom operation's monthly gross receipts.<sup>15</sup> The amount of tax payable on pari-mutuel wagering activities depends on the location of the track, type of pari-mutuel wagering license, and specific type of wagering conducted. In addition to the tax on handle<sup>16</sup>, pari-mutuel facilities are also subject to daily license fees, admission taxes, and taxes on breaks.<sup>17</sup> To further complicate the equation, some facilities are eligible for credits and tax exemptions.

### **III. Effect of Proposed Changes:**

The bill amends the definition of full schedule of live racing or games for jai alai frontons who have conducted at least 100 performances per year and who have a handle less than \$4 million per year. Instead of requiring 100 performances for 10 years after December 31, 1992, the bill reduces that requirement to 100 performances for 3 consecutive years plus the handle requirements in order for a jai alai fronton to qualify for the reduced schedule of 40 performances instead of 100 performances.

According to the division, Hamilton Jai Alai and Poker would qualify for the reduction in performances. However, if ch. 2009-170, L.O.F., becomes law, Hamilton has to conduct 90 percent of its games based upon the 100 live performance standard to continue to operate a licensed cardroom.

The bill requires a harness horse facility to enter into an agreement governing purses with the Florida Standardbred Breeders and Owners Association before a slot license can be issued or renewed.

The bill eliminates the tax on handle and cardroom tax payable by non-slot pari-mutuel facilities. If the tax amount paid from slot machine revenues is below the slot machine revenue paid in

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<sup>12</sup> Section 849.086(5)(b), F.S.

<sup>13</sup> See, Senate Bill 622.

<sup>14</sup> See, ss. 550.0951 and 849.086(13)(a), F.S.

<sup>15</sup> Section 849.086(13)(a), F.S.

<sup>16</sup> Handle means the aggregate contributions to a pari-mutuel pool. Section 550.002(13), F.S.

<sup>17</sup> Breaks means the portion of a pari-mutuel pool which is computed by rounding down to the nearest multiple of 10 cents and is not distributed to the contributors or withheld by the permit holder as takeout. Section 550.002(1), F.S.

2008-2009 threshold plus the amount of taxes that were eliminated in the given year for the tax on handle and cardroom tax, the non-slot pari-mutuels will have to pay a surcharge. The surcharge cannot be greater than \$15 million and will be divided among the non-slot facilities, with each facility paying it's pro rata share. The bill provides that the division is authorized to collect a fee for each pari-mutuel permit holder that does not operate slot machines to cover the cost of regulation if the taxes and fees collected do not cover that cost.<sup>18</sup>

The bill also requires non-slot pari-mutuel facilities to pay six percent of the gross cardroom receipts for purses and awards instead of four percent.

The bill shall take effect on July 1, 2010.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The bill reduces handle and cardroom taxes for all pari-mutuels that do not operate slot machines.

B. Private Sector Impact:

The pari-mutuels that do not operate slot machines would receive a tax reduction of approximately \$18 million.

C. Government Sector Impact:

The Revenue Estimating Conference (REC) met on April 16, 2010, and adopted the estimate below for the impact on the provisions in the bill.

	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
General Revenue	(12.0)	(12.0)	(11.7)	(11.6)	(11.5)

<sup>18</sup> The division estimates that the cost of regulation is between \$10 and \$11 million per year.

State Trust	(5.0)	0	0	0	0
Total State Impact	(17.0)	(12.0)	(11.7)	(11.6)	(11.5)
Total Local Impact	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)
<b>Total Impact</b>	<b>(18.0)</b>	<b>(13.0)</b>	<b>(12.7)</b>	<b>(12.6)</b>	<b>(12.5)</b>

The division’s annual operating cost is \$11 million. Based on the REC results, the potential deficit in the division’s Pari-mutuel Wagering Trust Fund is \$5 million.

According to the division, the provision in the bill which establishes rule authority for a regulatory fee to make up the shortfall is problematic due to the lengthy rule making process, as well as potential administrative challenges. This could create a revenue stream that is unreliable to meet the regulatory costs of the division.

**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 April 13, 2010:**

The committee substitute replaces the legislative intent to revise the laws relating to pari-mutuel wagering. (Refer to Effect of Proposed Changes section of this analysis.)

- B. **Amendments:**

**Barcode 126638 by General Government Appropriations on April 19, 2010:**

This amendment deletes lines 85-306 of the CS, relating to the tax exemption for the non-slot pari-mutuel facilities. The amendment exempts the non-slot machine pari-mutuel facilities from the payment of the 10 percent cardroom tax. All facilities will continue to pay the tax on handle from pari-mutuel wagering activities. The amendment reduces the fiscal impact of the bill from \$18 million to \$8.4 million. The fiscal impact is the result of a \$7.6 million loss from the cardroom tax at the non-slot pari-mutuel facilities and a reduction of \$800,000 from the distribution to local governments that have non-slot facilities with cardrooms.

The amendment also directs all of the cardroom gross receipts to the Pari-mutuel Wagering Trust Fund. (WITH TITLE AMENDMENT)

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

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