

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 Oversight and Accountability Committee

BILL: CS/SB 668

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Ring

SUBJECT: Florida Gaming Trust Fund

DATE: March 31, 2011

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------|----------------|-----------|------------------------|
| 1. | Harrington | Imhof | RI | Fav/1 amendment |
| 2. | McKay | Roberts | GO | Fav/CS |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="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:

This bill creates the Florida Gaming Trust Fund within the Department of Gaming Control. The bill provides that money in the fund shall be used for the regulation of skill-based machine gaming and slot machine gaming. The bill is linked to CS/SB 666, which creates the Department of Gaming Control.

This bill creates an unnumbered section of law.

II. Present Situation:

Creation and Operation of Trust Funds

A trust fund consists of moneys received by the state, which under law or under trust agreement, are segregated for a purpose authorized by law.¹ Section 19(f), Art. III, of the Florida Constitution governs the creation of trust funds. This constitutional provision prohibits the creation by law of a trust fund of the state or other public body without a three-fifths vote of the

¹ Section 215.32(2)(b)1., F.S.

membership of each house of the Legislature. This provision further specifies that a trust fund must be created in a separate bill for that purpose only.

In addition, the Legislature has established criteria governing the establishment of trust funds. Under these criteria, a law creating a trust fund must, at a minimum, specify:

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes that the trust fund is established to meet; and,
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.²

The Chief Financial Officer is directed to invest all trust funds and all agency funds of each state agency.³ Under current law, any balance of an appropriation for any given fiscal year that is remaining after lawful expenditures have been charged against it reverts to the fund from which the Legislature appropriated it and shall be available for reappropriation by the Legislature.⁴ Any reversion of appropriations provided from the General Revenue Fund must be transferred to the General Revenue Fund within 15 days after the reversion, unless otherwise provided by federal or state law, including the General Appropriations Act.⁵

State trust funds terminate no more than 4 years after the effective date of the act that created them, unless they are re-created by the Legislature with a three-fifths vote of the House and the Senate.

Slot Machine Gaming

The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation is responsible for the regulation of slot machine gaming.⁶

Slot machine licensees are required to pay a licensure fee of \$2.5 million for fiscal year 2010-2011. The annual slot machine licensure fee is reduced in fiscal year 2011-2012 to \$2 million.⁷ In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.⁸ If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee shall pay to the state within 45 days after the end of the state fiscal year a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year.⁹

² Section 215.3207, F.S.

³ Section 17.61, F.S.

⁴ Section 216.301(1)(b), F.S.

⁵ Section 216.301(1)(d), F.S.

⁶ See, ch. 551, F.S.

⁷ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was \$3 million.

⁸ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.

⁹ Chapter 551.106(2), F.S. The 2008-2009 tax paid on slot machine revenue was \$103,895,349. It does not appear that this provision will be triggered because of the additional facilities beginning slot operations. Calder began slot operations in

All license fees and taxes paid by slot machine licensees are deposited into the Pari-mutuel Wagering Trust Fund.¹⁰ Slot machine license fees are accounted for separately from other taxes and fees from other pari-mutuel gaming activities and are used solely for investigations of slot machine facilities, slot machine regulation, and enforcement of slot machine regulations.¹¹

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.

Section 849.161, F.S., provides an exception to the slot machine prohibition in ch. 849, F.S.¹² Amusement games and machines are authorized in an arcade amusement center¹³ 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.¹⁴

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.”¹⁵

III. Effect of Proposed Changes:

The bill creates the Florida Gaming Trust Fund within the Department of Gaming Control. The money deposited into the fund shall be from sources designated by law. In a related bill, CS/SB 666, the Department of Gaming Control is created. In CS/SB 666, the new department does not regulate or impose any taxation on skill-based arcade amusement games. In CS/SB 666, no monies are deposited into the Florida Gaming Trust Fund. However, this bill provides that the fund will be utilized by the department to fund the regulation of skill-based machine gaming and slot machine gaming. The balance of the trust fund at the end of any fiscal year is to remain in the trust fund for use in subsequent years.

January 2010 and Flagler began operations in October 2009. Miami Jai Alai and Dania Jai Alai have not begun slot operations.

¹⁰ See, s. 551.106(1)(a), F.S.

¹¹ *Id.*

¹² See ss. 849.15 and 849.16, F.S.

¹³ 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.”

¹⁴ Section 849.161(1)(a)1., F.S.

¹⁵ Section 849.161(1)(a)2., F.S.

The trust fund must be terminated on July 1, 2015, unless terminated sooner, in accordance with the Florida Constitution.¹⁶ State trust funds shall terminate within four years after the effective date of the act authorizing the trust fund unless a shorter time period is set by the legislature.

The bill provides a contingent effective date of July 1, 2011, if legislation creating the Gaming Commission and Department of Gaming Control 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:

In accordance with s. 19(f)(2), Art. III of the Florida Constitution, the trust fund shall be terminated on July 1, 2015. Before its scheduled termination, the fund shall be reviewed in accordance with s. 215.3206(1) and (2), F.S.

In addition, s. 19(f)(1), Art. III of the Florida Constitution provides that “[n]o trust fund of the State of Florida or other public body may be created or re-created by law without a three-fifths vote of the membership of each house of the legislature in a separate bill for that purpose only.”

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Gaming Control, as provided in CS/SB 666, will regulate pari-mutuel wagering, slot machines, cardrooms, and game promotions. Revenues received from taxation and fees for every regulated entity of the department are deposited into the Pari-mutuel Wagering Trust Fund. Nothing in CS/SB 666 requires any funds to be deposited into the Florida Gaming Trust Fund.

¹⁶ Section 19(f)(2), Art. III, Florida Constitution.

VI. Technical Deficiencies:

The bill provides that the money in the trust fund will be used for the regulation of slot machine gaming and skill-based machine gaming. Under Ch. 551, F.S., slot machine gaming regulation is funded from an annual slot machine license fee per facility. The slot machine license fee is deposited in the Pari-mutuel Wagering Trust Fund, and not the Florida Gaming Trust Fund.

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 Governmental Oversight and Accountability on March 30, 2011:

The CS corrects the effective date and ties it to the related bill, SB 666.

B. Amendments:

None.