

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 843 Department of the Lottery
SPONSOR(S): Government Operations Appropriations Subcommittee, Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 902

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Naf	Williamson
2) Government Operations Appropriations Subcommittee	11 Y, 0 N, As CS	Keith	Topp
3) Appropriations Committee	23 Y, 0 N	Keith	Leznoff

SUMMARY ANALYSIS

The Department of the Lottery operates as an entrepreneurial business whose mission is to generate revenue to enhance the quality of Florida's educational system, while offering innovative and entertaining Lottery products to the citizens and visitors of the state. Specifically, this bill amends the statutes related to state lotteries and is linked to the proposed House of Representatives' General Appropriations Act for Fiscal Year 2012-13.

The bill amends the statute to allow for the expansion of the types of permissible player-activated machines to also include 350 Full Service Vending Machines (FSVM's) that dispense both online (counter sales) and instant lottery tickets (scratch off). Under current Florida law, the Department of the Lottery only has permission to operate machines from which a player can buy instant lottery ticket games.

The November 3, 2011 Revenue Estimating Impact Conference estimates that revenues (generated by 350 FSVM's) for the Educational Enhancement Trust Fund will be \$8,100,000 in the first (partial) year, FY 2012-2013. The estimate then rises to \$21,000,000 in its first full year, FY 2013-14.

HB 843 conforms to the proposed House of Representatives' General Appropriations Act for FY 2012-13 as the \$8.1 million in funds generated from authorizing the FSVM's have been accounted for and included in the Educational Enhancement Trust Fund.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Department of the Lottery

In 1987, the Legislature enacted chapter 87-65, L.O.F.,¹ to implement a voter-approved constitutional amendment² allowing the State of Florida to operate a lottery. The Department of the Lottery (Lottery) was established for the purpose of operating the state lottery “so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens.”³ Specified proceeds from the sale of lottery tickets are transferred to the Educational Enhancement Trust Fund and are used to benefit public education.⁴

Instant Ticket Vending Machines

Current law allows the Lottery to operate instant ticket vending machines (ITVMs) from which a player can buy instant lottery game tickets.⁵ No other player-activated machines are permissible.⁶ An ITVM must:

- Be under the supervision and within the direct line of sight of the lottery retailer to ensure that the machine is only operated by persons at least 18 years of age;
- Be capable of being electronically deactivated by the retailer to prohibit use by persons less than 18 years of age, using a lockout device that maintains the ITVM's deactivation for at least 5 minutes; and
- Be designed to prevent its use or conversion for use in any manner other than the dispensing of instant lottery tickets.⁷

An authorized ITVM dispenses instant lottery game tickets (scratch off) after the insertion of a coin or currency by a player.⁸ It may dispense change to players purchasing tickets but may not be used for paying the holders of any kind of winning tickets. At least one clerk must be on duty at the lottery retailer unless the retailer has violated s. 24.1055, F.S.,⁹ in which case at least two clerks must be on duty.¹⁰

The Lottery must lease all ITVMs.¹¹

According to a report by the Office of Program Policy Analysis and Government Accountability:

The first 1,000 ITVMs, which were installed at the Lottery's highest selling retailers around the state [in 2009], appear to have exceeded initial sales estimates. Scratch-off sales at these retailers increased 20% compared to a statewide decrease of 1% for all other retailers. Assuming the average increase of 20% in scratch-off sales at these retailers was primarily due to vending machine sales, the Lottery achieved nearly \$12 million more in transfers to education. Moreover, the vending machines provide players convenient access

¹ Codified as ch. 24, F.S.

² Section 15, Art. X of the State Constitution.

³ Section 24.104, F.S.

⁴ See s. 24.121(2), F.S.

⁵ See s. 24.105(9)(a)3. and 4., F.S.

⁶ *Id.*

⁷ See s. 24.105(9)(a)4., F.S.

⁸ *Id.*

⁹ Section 24.1055, F.S., prohibits the sale of lottery tickets to minors.

¹⁰ Section 24.105(9)(a)4., F.S.

¹¹ Section 24.111(2)(h), F.S.

to a larger selection of games; transmit sales data in real-time, allowing the Lottery to better track ticket sales; and improve retailer operational efficiency.¹²

Gaming Compact Provisions Related to Lottery Vending Machines

The gaming compact between the State of Florida (state) and the Seminole Tribe of Florida (Tribe) provides the Tribe the exclusive right to conduct specified types of gaming in return for revenue sharing payments by the Tribe to the state.¹³ If the state violates the exclusivity provisions of the compact, the Tribe may be able to reduce or cease payments to the state.¹⁴ The compact limits lottery game distribution, but provides an exception for three types of lottery vending machines (LVMs).¹⁵ However, the compact limits the numbers of LVMs that may be located at any one location to 10 and limits the usage of LVMs to provide that no LVM that dispenses instant tickets may be installed at any licensed pari-mutuel facility.¹⁶

Effect of Proposed Changes

The bill requires the Lottery to adopt rules governing the establishment and operation of full service vending machines (FSVMs). FSVMs are player-operated machines that dispense online lottery tickets (counter sales), instant lottery tickets (scratch off), or both online and instant lottery tickets.¹⁷

The bill relocates and amends the requirements for vending machines and vending machine retailers to include FSVMs. The bill makes drafting changes to the requirements but the content remains substantially the same, with an additional requirement that the vending machine, or any machine or device linked to the vending machine, may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. The bill specifies that this new requirement does not preclude the use of casino game themes or titles on such tickets or signage or advertising displays on the machines.

As a conforming change, the bill amends the requirement that the Lottery must lease all ITVMs to instead provide that the Lottery must lease all vending machines that dispense online lottery tickets, instant lottery tickets, or both online and instant lottery tickets.

¹² “Lottery Profits Decline; Options Available to Enhance Transfers to Education,” Office of Program Policy Analysis and Government Accountability Report No. 11-12 (March 2011) at 4.

¹³ *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 128 (hereinafter Gaming Compact).

¹⁴ See part XII, Gaming Compact, *supra* at n. 8.

¹⁵ The three types of allowable lottery vending machines are:

1. A machine to dispense pre-printed paper instant lottery tickets, but that does not read or reveal the results of the ticket, or allow a player to redeem any ticket. The machine, or any machine or device linked to the machine, may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. This does not preclude the use of casino game themes or titles on such tickets or signage or advertising displays on the machines; or
2. A machine to dispense pre-determined electronic instant lottery tickets that displays an image of the ticket on a video screen on the machine and the player must touch the image of the ticket on the video screen to reveal the outcome of the ticket, provided the machine does not permit a player to redeem winnings, does not make use of video reels or mechanical reels or simulate the play of any casino game, and the lottery retailer is paid the same amount as would be paid for the sale of paper instant lottery tickets; or
3. A machine to dispense a paper lottery ticket with numbers selected by the player or randomly by the machine. The machine does not reveal the winning numbers and the winning numbers are selected at a subsequent time and different location through a drawing by the Florida Lottery. The machine, or any machines or device linked to the machine, may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. The machine may not be used to redeem a winning ticket. This does not preclude the use of casino game themes or titles for signage or advertising displays on the machine. (See parts III.F. and XII.B.8., Gaming Compact, *supra* at n. 7)

¹⁶ See part XII.B.8, Gaming Compact, *supra* at n. 8.

¹⁷ Online games are games where the player picks numbers and the drawing occurs at a later time and location and which are connected to a central computer. Instant games are paper scratch-off tickets. (See “Review Options for New Lottery Games and Game Distribution,” Florida Senate Issue Brief 2012-220.) The type of full service vending machine created by the bill appears to be a lottery vending machine permitted under the gaming compact.

The bill provides an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1. Amends s. 24.105, F.S., relating to permissible Lottery player-activated vending machines.

Section 2. Amends s. 24.111, F.S., relating to the Lottery's lease of player-activated vending machines.

Section 3. Amends s. 24.112, F.S., relating to requirements for Lottery player-activated vending machines and vending machine retailers.

Section 4. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Fiscal Year 2012-2013: \$8,100,000.

Fiscal Year 2013-2014: \$21,000,000.

Also see FISCAL COMMENTS.

2. Expenditures:

Fiscal Year 2012-2013: \$3,652,331. *Also see FISCAL COMMENTS.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Lottery estimates that the cost for one FSVM would be \$700 per month, and has requested funding for 350 FSVMs in the department's FY 2012-13 Legislative Budget Request.¹⁸

The revenue estimating conference held on November 3, 2011 estimated that, with the costs of leasing the 350 FSVM's accounted for, the additional revenue to the Educational Enhancement Trust Fund would be \$8,100,000 in Fiscal Year 2012-2013 and \$21,000,000 in Fiscal Year 2013-2014.¹⁹

¹⁸ Because lease of the FSVMs would be subject to an open procurement process pending the passage of this bill, this funding approximation is based on information from the industry and providers. (See email correspondence between House of Representatives staff and Lottery staff, January 16, 2012. On file with the Government Operations Subcommittee.)

¹⁹ "Revenue Impacts of Authorization for Additional Lottery Sales Equipment," Revenue Estimating Conference analysis (November 3, 2011), available online at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/impact1103.pdf> (last visited January 16, 2011).

HB 843 conforms to the proposed House of Representatives' General Appropriations Act for FY 2012-13 as the \$8.1 million in funds generated from authorizing the FSVM's have been accounted for and included in the Educational Enhancement Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 24.105(9)(a), F.S., requires the Lottery to adopt rules governing the establishment and operation of the state lottery, including the type of lottery games to be conducted. The Lottery may need to amend any existing rules relating to ITVMs to also include FSVMs, and appears to have sufficient authority to do so.

The Lottery does not appear to have any existing rules limiting the locations of LVMs. However, Lottery staff states there are no instances in which the amount of LVMs in one location would exceed 10, the maximum allowable under the terms of the gaming compact.²⁰

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2012, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute.

- Amendment 1 provides that the title read "An act relating to the Department of the Lottery".

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.

²⁰ See email correspondence between House of Representatives staff and Lottery staff, January 16, 2012. On file with the Government Operations Subcommittee.