

**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 986

INTRODUCER: Senator Altman and others

SUBJECT: Slot machines and slot machine components

DATE: February 7, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	<b>Unfavorable</b>
2.	_____	_____	BC	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill clarifies that the Division of Pari-mutuel Wagering (division) has authority to adopt rules regarding slot machines including all components, hardware, and software. The bill amends the rulemaking authority for the division to add specific rule authority regarding specifications of the required internal components of a slot machine, including the location, configuration, and function of the components, as well as the operating requirements for slot machine hardware and software. The bill provides that the division shall have rulemaking authority over the procedures and specifications for slot machines to ensure the random probabilities of winning plays and the specifications for the operation of the random-number generator of each slot machine.

The bill prohibits a slot machine’s random number generator from serving more than one station or terminal where a player places wagers. In addition, the bill clarifies that slot machines may be linked to other slot machines within the facility of a slot machine licensee for progressive jackpot payouts. Currently, the bill includes a scrivener’s error to prevent progressive systems.

This bill substantially amends the following sections of the Florida Statutes: 551.103, 551.104, and 551.121.

**II. Present Situation:**

**The Division of Pari-mutuel Wagering**

The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation provides regulatory oversight to pari-mutuel wagering activities, cardrooms located at pari-mutuel facilities, and slot machines located at pari-mutuel facilities located in Miami-

Dade and Broward Counties. The mission of the division is the efficient, effective and fair regulation of authorized gaming at pari-mutuel facilities in Florida.<sup>1</sup>

The division's primary responsibilities include:

- Ensuring that races and games are conducted fairly and accurately;
- Ensuring the safety and welfare of racing animals;
- Collecting state revenue accurately and timely;
- Issuing occupational and permitholder operating licenses;
- Regulating pari-mutuel, cardroom, and slot machine operations;
- Ensuring that permitholders, licensees, and businesses related to the industries comply with state law; and
- Serving as the State Compliance Agency for the Compact between the Seminole Tribe of Florida and the State of Florida.

The division provides oversight to:

- 35 permitholders operating at 29 facilities:
  - 16 Greyhound
  - 3 Thoroughbred
  - 1 Harness
  - 6 Jai-Alai
  - 1 track offering limited intertrack wagering and horse sales
  - 2 Quarter Horse
- 24 Cardrooms operating at pari-mutuel facilities
- 6 Slot facilities located in Broward and Miami-Dade County pari-mutuel facilities.

### **Slot Machine Gaming**

During the 2004 General Election, the electors approved Amendment 4 to the Florida 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. 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. Under the provisions of the amendment, seven pari-mutuel facilities are eligible to conduct slot machine gaming. Of the seven, six are operating slot machines.<sup>2</sup>

In addition to the seven locations authorized for slot machines under the Florida Constitution, on July 1, 2010, a statutory amendment expanded the locations that were authorized slot machine gaming to include pari-mutuel facilities located in a charter county or a county that has a referendum approving slots where the referendum was held pursuant to a statutory or

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<sup>1</sup> <http://www.myflorida.com/dbpr/pmw/index.html> (last visited January 23, 2012).

<sup>2</sup> The Isle Casino and Racing at Pompano Park, Mardi Gras Racetrack and Gaming Center, Gulfstream Park, Calder/Tropical Park Racetrack, Flagler Dog Track and Magic City, and Miami/Summer Jai Alai are currently operating slot machines.

constitutional authorization after the effective date of the amendment. The facility must have conducted live racing for two calendar years preceding its application and must comply with other requirements for slot machine licensure.<sup>3</sup> Currently, only existing pari-mutuel facilities in Miami-Dade County qualify for slot machine authorization. Under the statutory provision, one additional facility became eligible for slot machine gaming, Hialeah Park (a quarter horse facility).<sup>4</sup> Hialeah Park has been granted a license to conduct slot machine gaming but is not currently operating slot machine gaming.

In order to conduct slot machine gaming, the slot machine applicant and licensee must conduct a full schedule of live racing.<sup>5</sup> Slot machine licensees may make available for play up to 2,000 slot machines within the property of the facilities of the slot machine licensee.<sup>6</sup> Slot machine licensees are required to pay an annual licensure fee of \$2 million.<sup>7</sup>

In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.<sup>8</sup> 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.<sup>9</sup>

### **Rulemaking Authority**

Section 551.103, F.S., provides that the division shall adopt all rules necessary to implement, administer, and regulate slot machine gaming. Such rules must, in pertinent part, include:

- Procedures for applying for a slot machine license and renewal of a slot machine license;
- Technical requirements and the qualifications contained in this chapter that are necessary to receive a slot machine license or slot machine occupational license;
- Procedures to scientifically test and technically evaluate slot machines for compliance with [ch. 550, F.S.];

<sup>3</sup> See, ch. 2010-29, L.O.F. and s 551.102(4), F.S.

<sup>4</sup> Currently the provision is being challenged as violating s. 23, Art. X, Florida Constitution. The trial court upheld the constitutionality in Leon County. That decision was upheld by the First District Court of Appeal. See consolidated cases, *Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D11-130 (Fla. 1<sup>st</sup> DCA) and *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D10-6780 (Fla. 1<sup>st</sup> DCA). The case has been appealed to the Florida Supreme Court. See *Florida Gaming Centers, Inc. v. Florida Department of Business and Professional Regulation, et al*, SC11-2182 (Fla.)

<sup>5</sup> Section 551.104(4)(c), F.S.

<sup>6</sup> Section 551.114(1), F.S.

<sup>7</sup> Section 551.106(1), F.S. Prior to the effective date of ch. 2010-29, L.O.F., the license fee was \$3 million.

<sup>8</sup> Section 551.106(1), F.S. Prior to the effective date of ch. 2010-29, L.O.F., the tax rate was 50 percent.

<sup>9</sup> Section 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 January 2010 and Flagler began operations in October 2009. During fiscal year 2009-2010, the tax paid on slot machine revenues was \$138,125,105. In 2010-2011, after the tax rate was reduced, the tax paid on slot machine revenues exceeded \$125 million. Miami Jai Alai began slot operations in January 2012. Dania Jai Alai and Hialeah Park have not begun slot operations.

- Procedures relating to slot machine revenues, including verifying and accounting for such revenues, auditing, and collecting taxes and fees;
- Procedures for regulating, managing, and auditing the operation, financial data, and program information relating to slot machine gaming that allow the division and the Department of Law Enforcement to audit the operation, financial data, and program information of a slot machine licensee, and provide the division and the Department of Law Enforcement with the ability to monitor, at any time on a real-time basis, wagering patterns, payouts, tax collection, and compliance with any rules;
- Procedures for requiring each licensee at his or her own cost and expense to supply the division with a bond having the penal sum of \$2 million;
- Procedures for requiring licensees to maintain specified records and submit any data, information, record, or report, including financial and income records necessary to the proper implementation and enforcement of [ch. 550, F.S.];
- A requirement that the payout percentage of a slot machine be no less than 85 percent;
- Minimum standards for security of the facilities, including floor plans, security cameras, and other security equipment; and
- Procedures for requiring slot machine licensees to implement and establish a drug-testing program for all slot machine occupational licensees.

### **Division of Administrative Hearing**

On July 5, 2006, the division adopted Rule 61D-14.041, F.A.C., as part of its original slot machine regulations. This rule established a requirement that a slot machine have an internal random number generator, as well as establishing criteria for the operation of the random number generator. According to the division, a random number generator is a vital slot machine component that produces the random outcomes used in modern slot machines to determine whether a play is a win or a loss. Once the random number generator has determined whether the play is a win or loss, the slot machine's programming displays the outcome to the player through spinning wheels or video displays.

On February 28, 2011, a Rule Challenge Petition was filed with the Division of Administrative Hearings (DOAH) by Interblock USA, LLC (Interblock).<sup>10</sup> Interblock manufactures gambling machines that play automated table games such as roulette and craps with physical wheels or dice, instead of using all electronic images. A single random number generator, external to the player stations, can operate the results for multiple player stations. The results of those games are shared by multiple players at separate terminals. The petition challenged the division's authority to adopt a rule that required a slot machine to have a random number generator.

On March 11, 2011, Shuffle Master, Inc., which manufactures a variety of gaming devices, including slot machines, intervened in the case.<sup>11</sup> Shuffle Master, like Interblock, manufactures electronic games that play table games such as roulette and craps through the use of a random number generator and video presentation of results. The results of those games are shared by multiple players at separate terminals.

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<sup>10</sup> A copy of the Petition can be viewed at: <http://www.doah.state.fl.us/DocDoc/2011/001075/11001075M-030111-09265926.PDF> (Last viewed January 30, 2012).

<sup>11</sup> A copy of the Petition to Intervene can be viewed at: <http://www.doah.state.fl.us/DocDoc/2011/001075/11001075PI-031111-12085208.PDF> (Last viewed January 30, 2012).

After a motion hearing on March 18, 2011 regarding Interblock's challenge to the authority of the division's ability to require each slot machine to have a random number generator, Interblock and Shuffle Master filed a stipulation that changed the case to challenge the requirement of Rule 61D-14.041, F.A.C., that the random number generator be "internal" rather than shared by multiple player terminals.<sup>12</sup>

On March 22, 2011, DOAH entered an order in the case finding that the division does not have the authority under ch. 551, F.S., to adopt a rule requiring a slot machine to have an "internal" random number generator.<sup>13</sup> The Final Order was entered on April 7, 2011.<sup>14</sup> On May 6, 2011, the division filed an appeal with the First District Court of Appeal. On January 23, 2012, the First District Court of Appeal affirmed the decision of DOAH.<sup>15</sup>

According to the division, the reasoning applied in this court decision could be applied to the other rules of the division concerning standards for internal components of a slot machine. This could result in machines that are simply automated table games, such as roulette and craps, to be played at licensed slot machine facilities.<sup>16</sup>

### III. Effect of Proposed Changes:

The bill authorizes the Division of Pari-mutuel Wagering to adopt rules related to slot machines, including:

- Procedures to scientifically test and technically evaluate slot machines, including all components, hardware, and software for the machines;
- Specifications of the required internal components for a slot machine, including the location, configuration, and function of the components, as well as the operating requirements for all hardware and software.
- Procedures and specifications for the slot machine to ensure the random probabilities of winning plays; and
- The specifications for the operation of the random-number generator of each slot machine.

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<sup>12</sup> A copy of the Joint Stipulation can be viewed at:

[http://www.doah.state.fl.us/DocDoc/2011/001075/11001075\\_0\\_03182011\\_04520644\\_e.pdf](http://www.doah.state.fl.us/DocDoc/2011/001075/11001075_0_03182011_04520644_e.pdf) (Last viewed January 30, 2012).

<sup>13</sup> A copy of the Order can be viewed at: <http://www.doah.state.fl.us/DocDoc/2011/001075/11001075OGEN-032111-08495549.pdf> (Last viewed on January 30, 2012).

<sup>14</sup> A copy of the Final Order can be viewed at: <http://www.doah.state.fl.us/ROS/2011/11001075.pdf> (Last viewed on January 30, 2012).

<sup>15</sup> A copy of the First District Court of Appeal, affirmed, per curiam, can be viewed at:

<http://www.doah.state.fl.us/ROS/2011/11001075%20OPINION.pdf> (Last viewed on January 30, 2012). An opinion that is affirmed per curiam with no written opinion has no precedential value. See *Department of Legal Affairs v. District Court of Appeal, 5<sup>th</sup> Dist.*, 434 So.2d 310 (Fla. 1983). The Supreme Court went on to state that "[a]n affirmance without an opinion is an approval only of the point decided or result reached by the court below, and not of the opinion and the conclusions of law of the lower court, so as to establish a precedent for future action."

<sup>16</sup> Images and videos of the machines can be viewed at Interblock's website, which can be found at:

<http://www.interblock.eu/usa/products/G4/roulette/> (Last viewed January 31, 2012). This website highlights the technology that is available in electronic gaming and illustrates the types of games that may be authorized in the state without statutory oversight of the internal components of slot machines.

The bill amends s. 551.121(5), F.S., to provide that a slot machine's random-number generator may not serve more than one station or terminal where a patron places their wager. According to the division, requiring a single random number generator to operate a single player terminal reduces fraud. In addition, according to the department, this requirement ensures that the statutory limit of 2,000 machines per licensee is complied with. Otherwise, a random number generator could operate more than 10 player stations and could allow a licensee to operate well above the 2,000 machine limit.

The bill clarifies that a slot machine, or the computer operating system linking the slot machine, may be linked by any means to any other slot machines or computer operating system within the facility for progressive jackpot payouts.

The bill provides that a progressive system may not be used in conjunction with slot machines between licensed facilities. Committee staff has been informed that this change was done in error and will be corrected through an amendment.

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

**Other Potential Implications:**

In 2010, the state entered into a tribal-state compact (compact) with the Seminole Indian Tribe of Florida (Tribe), granting the Tribe substantial exclusivity on Class III and casino-style gaming in exchange for revenue sharing with the state.<sup>17</sup> The compact specified that if an expansion of gaming occurs, Tribal payments may be reduced or may cease.<sup>18</sup>

This bill attempts to restrict the type of slot machine games that may be conducted in the state. Without this bill, it is possible that multi-station games could be implemented in slot machine facilities that simulate the game of craps and roulette, two games that are currently not authorized anywhere in the state, even at tribal facilities. The Tribe has in the past argued that the state's "expansive definition of slot machines" that allowed for the operation of an electronically simulated blackjack game, which is played on an electronic table operated with an internal random number generator, constituted the authorization of Class III blackjack.<sup>19</sup> Although this argument did not prove successful, it is possible that the Tribe may argue that the use of multi-station slot machines or machines that utilize real dice for craps or real balls on a roulette wheel may constitute an expansion of gaming.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

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<sup>17</sup> *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.

<sup>18</sup> *Id.* See Part XII, Gaming Compact.

<sup>19</sup> See *Memorandum to the National Indian Gaming Commission*, Seminole Tribe of Florida, January 8, 2010. A copy of the memorandum is on file with the committee.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill limits the type of slot machines that may be utilized by slot machine facilities and which may be played by patrons of slot machine facilities to machines that operate a single player station off of a single random number generator. The bill would prohibit electronic multi-station games. According to an industry representative, over 200 game stations would have to be removed from the slot machine facilities, which would have an annual negative impact of approximately \$9 million to the slot machine facilities.

C. Government Sector Impact:

The bill provides clarity to the division regarding rulemaking authority concerning the internal components of slot machine gaming. Without this clarity, the division may continue to experience rule challenges. According to an industry representative, the result of the over 200 game stations being removed from the gaming floors would result in an annual negative impact of over \$4.8 million in gaming taxes to the state.

**VI. Technical Deficiencies:**

According to the division, on line 253, “not” was accidentally added. Committee staff has been informed that this was done in error and an amendment will be prepared to correct it.

**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.)

None.

B. Amendments:

None.

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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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