

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 Committee on Regulated Industries

BILL: CS/SB 490

INTRODUCER: Regulated Industries Committee and Senator Thompson

SUBJECT: State Lotteries

DATE: March 12, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Pre-meeting
2.			AED	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 490 requires the Department of the Lottery (department) to offer a special instant scratch-off ticket lottery game to be known as "Ticket for the Cure," for a six-year period beginning January 1, 2016 and ending on December 31, 2021. The lottery ticket sales revenues from this special game, after reductions for payments of prizes to players and the actual expenses of the department solely related to the game, will be split evenly and paid by the department to two groups: state and private universities that either have medical research facilities or are associated with such facilities, and non-university direct service providers that provide care directly to individuals who seek breast cancer services. Direct service providers must use fee schedules with the lowest cost to the state, and must use a system that guides and tracks patients over time through comprehensive health services at all levels and intensities of care. Breast and cancer screening must be also funded through the appropriations act at a level that matches federal funds for screening and early detection.

II. Present Situation:

Lottery Operations:

The Department of the Lottery is authorized by Article X, section 15, of the Florida Constitution, which states that "[l]otteries may be operated by the state." The constitution initially provided that the lotteries would be known as the "Florida Education Lotteries," and the proceeds from the

lotteries were to be deposited into a trust fund designated “The State Education Lotteries Trust Fund.” The constitution allows these provisions to be amended by general law.

Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. The Legislature recognized the operation of a lottery is a unique activity for state government, and procedures appropriate to the performance of other governmental functions are not necessarily appropriate to the operation of a state lottery; and further statements of legislative purpose and intent may be summarized as:¹

- Implementing the constitutional authorization to enable the people of the state to benefit from significant education funding and to play the best lottery games available;
- Supporting improvements in public education with the net proceeds of lottery games, without using those proceeds as a substitute for existing public education resources;
- Operating lottery games by a state agency that functions to the extent possible as an entrepreneurial business enterprise that is self-supporting and revenue-producing, but is also accountable to the Legislature and the people of the state through audits and compliance with financial disclosure, open meetings, and public records laws.

The department’s headquarters must be in Tallahassee, but regional offices may be established throughout the state as necessary for the efficient operation of the lottery.² The lottery must be operated “to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens.”³

The Florida Department of Lottery (department) is authorized to supervise and conduct the operation of the state lottery under ch. 24, F.S. Currently, the department operates both online games (games where the player picks numbers and the drawing occurs at a later time and location and which are connected to a central computer) and instant games (paper scratch-off tickets). The department conducts state online games⁴ and offers two multi-state lottery games - Powerball and Mega Millions. Players may purchase tickets at one of approximately 13,000 retailers.⁵ Online games and instant (scratch-off) tickets may be purchased using full service vending machines.⁶ Instant tickets may also be purchased from instant ticket vending machines.⁷ Currently, there are approximately 1,500 instant ticket vending machines and 500 full service

¹ See s. 24.102, F.S.

² See s. 20.317(3), F.S.

³ See s. 24.104, F.S.

⁴ The current online games are Florida Lotto, Lucky Money, Mega Millions, Fantasy 5, Play 4, and Cash 3. See <http://www.flalottery.com/> (last visited March 9, 2015).

⁵ See *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Improve Efficiency*, Report No. 15-03, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, (January 2015) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> at page 7 (last accessed Mar. 10, 2015) (hereinafter OPPAGA Report 15-03).

⁶ Full service vending machines offer both online games and scratch-off games.

⁷ See *Lottery Transfers Have Recovered; Options Remain to Enhance Transfers*, Report No. 14-06, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, (January 2014) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> (last accessed Mar. 10, 2015).

vending machines in use in the state.⁸ Florida ranked second highest among U.S. lotteries in Fiscal Year 2013-2014, with total lottery ticket sales of \$5.4 billion.⁹

In 2010, the state entered into a tribal-state agreement (Gaming Compact) with the Seminole Tribe of Florida (Tribe), granting the Tribe substantial exclusivity to offer Class III gaming including slot machines and raffles and drawings at all 7 casinos, and banking or banked card games (blackjack (21), baccarat, and chemin de fer games) at 5 of 7 of its casinos, in exchange for revenue sharing with the state.¹⁰ The compact provides that games authorized by ch. 24, F.S., as of February 1, 2010, and the operation of “lottery vending machines,”¹¹ as defined in the compact, have no impact on revenue sharing between the Tribe and the state.¹²

Use of Lottery Revenues:

The department generates revenues through the sale of lottery game tickets. Online games allow players to select from a range of numbers on a play slip that are printed by computer terminals that are connected to the department’s system (online) for a drawing at a later time.¹³ Scratch-off games are tickets with latex covering that players scratch off to determine instantly whether they have won.¹⁴ To increase sales during 2014, the department launched new products and enhanced product distribution.¹⁵

No monies from the General Revenue Fund are appropriated to the department, which is supported solely by game ticket sales. For Fiscal Year 2013-2014, the Legislature appropriated \$163.5 million for operations from lottery revenue, with 420 positions authorized.¹⁶ In Fiscal Year 2014-2015, the department allocated approximately 75 percent, or \$122.5 million, of its \$163.5 million appropriation to produce and advertise online and scratch-off games.¹⁷

In addition to funding the operational appropriation, lottery revenue is used to pay prizes and retailer commissions.¹⁸ In Fiscal Year 2013-2014, prizes totaled \$3.43 billion and retailer commissions totaled \$297.3 million.¹⁹ Lottery tickets are sold through retailers across the state, such as supermarkets, convenience stores, gas stations, and newsstands.²⁰ Retailers receive commissions for selling tickets at a rate of five percent of the ticket price and/or one percent of

⁸ *Id.* at page 7.

⁹ See OPPAGA Report 15-03 at page 1; however, as indicated therein in footnote 4, Florida is ranked ninth in per capita sales, meaning that the eight states that are higher in the ranking than Florida sell more tickets per person in their states.

¹⁰ See the executed Gaming Compact at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last accessed Mar. 10, 2015). Banking or banked card games may not be offered at the Brighton or Big Cypress facilities unless and until the state allows any other person or entity to offer those games, as set forth in paragraph F.2. of Part III of the Gaming Compact, at page 4.

¹¹ *Id.* at page 10 of the Gaming Compact; as to the definitions of the 3 types of “Lottery Vending Machine.”

¹² *Id.* at page 42 of the Gaming Compact.

¹³ OPPAGA Report 15-03, at page 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at page 10.

¹⁷ *Id.* at page 2.

¹⁸ See s. 24.121(2) and (3), F.S.

¹⁹ *Id.* at page 1.

²⁰ *Id.* at page 1 (footnote 3).

the prize value (up to \$599) for winning tickets that they redeem at their location.²¹ Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.²²

Funding from lottery ticket sales (excluding the prize and retailer payments described above) to the Educational Enhancement Trust Fund (EETF)²³ administered by the Department of Education²⁴ increased by \$71 million in Fiscal Year 2013-2014 to \$1.495 billion.²⁵ The transfer of funds by the department to the EETF must occur quarterly (EETF transfer), to be used to benefit public education in accordance with the provisions of the Florida Public Education Lottery Act as set forth in ch. 24, F.S.²⁶

All EETF transfers must be reserved as needed to meet debt service requirements for certain bonds authorized by the state, or distributed to school districts for the Classrooms First Program.²⁷

Pursuant to s. 24.121(5)(a), F.S., public educational programs and purposes funded by the EETF may include, but are not limited to:

- Endowment;
- Scholarship;
- Matching funds;
- Direct grants;
- Research and economic development related to education;
- Salary enhancement;
- Contracts with independent institutions to conduct programs consistent with the state master plan for postsecondary education; or
- Any other educational program or purpose deemed desirable by the Legislature.

Prior to the expenditure of funds, each school district must establish policies and procedures that define enhancement and the types of expenditures consistent with that definition.²⁸ In addition, each school district must make available to the public and distribute on a quarterly basis, in an easy to understand format, how the lottery funds allocated to the school district have been spent.²⁹

²¹ Section 24.115(1)(e), F.S., limits on-site redemption of tickets to amounts less than \$600, and validation procedures must be performed appropriate to the lottery game involved.

²² OPPAGA Report 2015-03, at page 1 (footnote 3).

²³ As noted above, the implementation schedule in the Florida Constitution was adopted in 1986, subject to amendment by general law, refers to the “State Education Lotteries Trust Fund.” See Fla. Const. art. X, s. 15. The Florida Public Education Lottery Act, enacted in 1987, reflects the term “Educational Enhancement Trust Fund.” See ch. 87-65, s. 21, L.O.F.

²⁴ See s. 24.121(2), F.S.

²⁵ See *Financial Audit of the Department of the Lottery, for the Fiscal Years Ended June 30, 2014, and 2013*, Report No. 2015-092, State of Florida Auditor General (January 2015), at page 4 (2015 Financial Audit) at http://www.myflorida.com/audgen/pages/pdf_files/2015-092.pdf (last accessed Mar. 10, 2015).

²⁶ See s. 24.121(2), F.S.

²⁷ See ss. 1013.68, 1013.70, and 1013.737, F.S., regarding the Classrooms First Program, the 1997 School Capital Outlay Bond Program, and the Class Size Reduction and Educational Facilities Lottery Revenue Bond Program, respectively.

²⁸ See s. 24.121(5)(a), F.S.

²⁹ See s. 24.121(5)(f), F.S.

The Legislature must equitably apportion funds in the EETF among public schools, community colleges, and universities, except for the following three exceptions that are handled differently, as described below.

- A portion of such net revenues, as determined annually by the Legislature, shall be distributed to each school district (for each public school in that district), allocated to each school in an equal amount for each student enrolled, for enhancing school performance through development and implementation of a school improvement plan. These moneys may be expended only on programs or projects selected by the school advisory council (SAC), or if a school does not have a SAC, by a parent advisory committee (PAC) appointed by the school district's advisory council. The PAC, to be composed of parents of students enrolled in that school and representative of the ethnic, racial, and economic community served by the school, must advise the school's principal on the programs or projects to be funded. Neither school district staff nor principals may override the recommendations of a SAC or, if applicable, a PAC. These moneys may not be used for capital improvements or for any project or program with a duration of more than 1 year; however, a SAC or PAC may independently determine that a program or project formerly funded should receive funds in a subsequent year.³⁰
- Funds from the EETF may not be released for any purpose to any school district in which one or more schools do not have an approved school improvement plan pursuant to existing law³¹ or do not have a SAC meeting legal requirements as to the composition of its membership.³² The Commissioner of Education must withhold disbursements from the EETF to any school district that fails to adopt the performance-based salary schedule required by law.³³
- Funds must be allocated annually for all components of the Florida Bright Futures Scholarship Program prior to application of the formula for equitable distribution to public schools, community colleges, and state universities.³⁴ If shortages require reductions in estimated distributions from the EETF, funds for the Florida Bright Futures Scholarship Program shall be reduced only after reductions in all other distributions are made.³⁵

III. Effect of Proposed Changes:

SB 490 creates s. 24.132, F.S., titled "Ticket for the Cure," and directs the Department of the Lottery (department) to offer a special instant lottery game with that name for a six-year period beginning January 1, 2016 and ending December 31, 2021. According to the department, scratch-off game tickets for a new game are pre-printed all at one time, and a prize structure is established for the new game. The tickets are then distributed across the state and sold until the pre-printed number of tickets is sufficiently diminished or the top prizes have been claimed by winning players. Depending on how receptive players are to a new game, the life cycle for a new scratch-off game varies between 6 and 18 months. According to the department, reissuance of scratch-off tickets for a game is typically based on demand for the tickets rather than a mandated

³⁰ See s. 24.121(5)(c), F.S.

³¹ See s. 1001.42(18), F.S.

³² See s. 24.121(5)(d), F.S.

³³ See s. 1012.22(1), F.S.

³⁴ See s. 24.121(5)(e), F.S.

³⁵ *Id.*

time period for the game,³⁶ and an end-date mandated for a special game could result in depressed sales in advance of the end-date specified for that game.

During the period that tickets for the “Ticket for a Cure” game are sold, marketing activities for the new game must supplement current marketing efforts; the department may not “unreasonably diminish the efforts devoted to marketing other instant lottery games.”³⁷

The bill amends s. 24.121(5), F.S., to direct the department to equitably apportion the net revenues received from a special instant lottery game to be created called “Ticket for the Cure.” The term “net revenues” is defined as the total amount of moneys received from ticket sales, less the amounts paid in prizes and the actual administrative expenses of the department “solely related to the Ticket for the Cure lottery game.”

The net revenues from the new game are to be split evenly and paid by the department to two groups:

- Those state and private universities that either have medical research facilities or are associated with them; and
- Non-university direct service providers that:
 - Provide care directly to individuals who seek breast cancer services;
 - Use a system that guides and tracks patients over time through comprehensive health services at all levels and intensities of care; and
 - Pay for services, equipment, or supplies based on the Medicare fee schedule or the fee schedule that results in the lowest cost to the state.

The term “medical research facilities” is not defined in the bill or in existing law. There is no identification of state or private universities that are, or may be in the future, associated with medical research facilities, nor any parameters required for a state or private university to qualify to be “associated with” a medical research facility. The term “research” is defined as expenditures to “advance the understanding, techniques, and modalities [methods] that are effective in the detection, screening, prevention, and treatment of breast cancer, including clinical trials.”

There is no frequency or time frame for the department to split or pay net revenues from the new lottery game. The department does not currently have authority to split or to pay any lottery revenue to third parties other than the quarterly transfers required to be made to the Educational Enhancement Trust Fund.³⁸

³⁶ For example, the new Monopoly Millionaire game was launched on October 19, 2014 in Florida. Despite launches in 23 other states, ticket sales for the new game ceased after two months due to slow sales, and the last drawing took place on December 26, 2014. See <http://edr.state.fl.us/Content/conferences/lottery/lotterysummary.pdf> (last accessed Mar. 10, 2015).

³⁷ Information and charts detailing historical lottery sales by lottery game are in the 2015 Financial Audit at pages 8-9, supra note 25.

³⁸ Appropriation of EETF monies is made through legislation implementing the General Appropriations act; the latest appropriation was enacted during the 2014 Legislative Session. See ch. 2014-51, s. 1, L.O.F., at pages 1-5, available at <http://laws.flrules.org/2014/51> (last visited Mar. 10, 2015).

Pursuant to s. 24.121(5)(a), F.S., the public educational programs and purposes that are listed in the Florida Public Education Lottery Act “may include, but are not limited to” those in existing law, and other programs and purposes may be added by the Legislature.

The bill prohibits the use of the funds for institutional, organizational, or community-based overhead costs, indirect costs, or levies. No definitions of these terms are stated in the bill.

The bill grants the department rulemaking authority to administer the new game.

Section 3 of the bill amends s. 381.93, F.S., the Mary Brogan Breast and Cervical Cancer Early Detection Program, to require that appropriations in the General Appropriations Act match the amounts of federal funds provided for screening and early detection purposes.

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:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The use of lottery ticket revenues for other programs and purposes other than those in existing law may impact existing programs and purposes that have been funded in the past.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Clarification may be needed respecting the reference of “community-based” in the prohibition on Lines 39-41 of the bill against use of the funds for overhead costs, indirect costs, or levies. No definition of that term is given, and it is unclear whether the prohibition is directed to institutions or organizations that are community-based, or to another type of entity.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 24.121, 381.93. This bill creates section 24.132 of the Florida Statutes.

IX. 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 March 11, 2015:

CS/SB 490 provides that the Department of the Lottery shall divide the net revenue from the “Ticket for the Cure” scratch-off game evenly between two groups: state and private cancer research universities that have or are associated with medical research facilities, and non-university direct service providers that provide care directly to individuals who seek breast cancer services.

Direct service providers must use the Medicare fee schedule or the fee schedule that results in the lowest cost to the state, and a system that guides and tracks patients over time through comprehensive health services at all levels and intensities of care.

Breast and cancer screening through the Mary Brogan Breast and Cervical Cancer Early Detection Program must be also funded through the appropriations act at a level that matches federal funds for screening and early detection.

- B. **Amendments:**

None.