

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1920

SPONSOR: Finance and Taxation Committee, Regulated Industries Committee and Senator Diaz de la Portilla

SUBJECT: Video Lotteries

DATE: April 15, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Keating</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides for the establishment, operation, and regulation of video lottery games. The games would be located at pari-mutuel sites and regulated by the Department of the Lottery. There are currently 31 active pari-mutuel permitholders at 27 facilities, all of whom would be eligible for licensure of video lottery terminals.

This bill substantially amends the following sections of the Florida Statutes: 24.103, 24.105, and 212.02. It also creates the following sections of the Florida Statutes: 24.125, 24.126, 24.127, 24.128, 24.129, 24.130, 24.131, 24.132, 24.133, 24.134, and 24.135.

II. Present Situation:

Article X, section 7 of the Florida Constitution allows for the operation of a state-operated lottery. The Florida Lottery was established by the Legislature in 1987 and codified as ch 24, F.S.

The operation of video lottery terminals is not presently authorized under Florida law. However, these machines do exist on "Cruises to Nowhere" and on Indian reservations. The machines on Indian reservations are currently unauthorized by law and are untaxed and unregulated. The only player activated lottery machines are those that dispense instant lottery game tickets following the insertion of a coin or currency by a ticket purchaser pursuant to s. 24.105(9)4., F. S.

Indian Gambling

In order for tribes to be authorized to conduct casino games or video lottery terminals (referred as Class III gaming), federal law requires that the parties first reach an agreement or compact on how the gaming would be conducted. Indians are permitted to operate casino gaming, only if the state in which the tribe is located permits such gaming for any purpose by anyone in the state. By permitting video lotteries in Florida, this bill allows the Indians to negotiate a compact with the state to use video lottery terminals.

The Seminole Indian tribe tried to negotiate a gaming compact with the state and, when the tribe felt the state was not negotiating in good faith, filed suit in federal court. The tribe won in the federal district court but lost in the U.S. Court of Appeal for the Eleventh Circuit. *Seminole Tribe of Florida v. State of Florida, Poarch Creek Indians v. Alabama*, 11 F.3d 1016 (1994) While the appeals court upheld a state's sovereign immunity against suits, it also said a tribe could appeal to the Secretary of the Interior if the immunity defense prevented a tribe from negotiating a compact with a state. The U.S. Supreme Court, which rendered its opinion in March, 1996 and said that an Indian tribe could not sue a state in Federal court for an alleged failure of the state to negotiate a compact in good faith, i.e., the court found the state immune from suit under the 11th Amendment to the U.S. Constitution.

In April, 1999, regulations were promulgated by the Department of Interior that would allow the licensing of Indian Class III gaming without the state's consent. Florida's Attorney General challenged the Secretary's authority for promulgating such regulations in Florida's Northern District Federal Court. The case is being held in abeyance until such time as the Department of Interior is actually poised to license a Florida tribe to engage in Class III gaming pursuant to the new regulations.

III. Effect of Proposed Changes:

The bill grants overall control of the video lottery terminals to the Department of the Lottery and provides a start date of October 1, 2003, to have in place the capacity to support video lottery games at facilities of video lottery retailers. Each lottery terminal shall be linked, directly or indirectly, to a computer system approved by the department.

The video lottery games can only be offered at the licensed pari-mutuel facility where the retailer has conducted a full schedule of live racing or games in fiscal year 2000-01 or is authorized to receive broadcasts of horse races under s. 550.6308, F.S.

Section 1. Amends 24.103, F.S., provides the following video lottery definitions:

- "Video lottery game" means an electronic game of chance and includes line-up games, traditional card games, poker, and progressive games where the jackpot grows and accumulates.
- "Video lottery terminal" (VLT's) is defined as a machine or device on which a video lottery game is played or operated.
- "Video lottery terminal vendor" means any person licensed by the department who engages in the business of selling, leasing, servicing, repairing, or upgrading video lottery terminals for video lottery retailers or who provides to the department or to a video

- lottery retailer, computer equipment, software or other functions related to video terminals.
- “Net terminal income” means currency and other consideration placed into a video lottery terminal, less payouts to or credits redeemed by players.
 - “Video lottery retailers” means any pari-mutuel permitholders licensed under chapter 550 who has paid an annual fee of \$2 million pursuant to s. 24.105(27) and who:
 - Conducted a full schedule of live races or games between July 1, 2000 and June 30, 2001; or
 - Applied for a pari-mutuel permit between January 1, 2003 and March 1, 2003, and has conducted a full schedule of live races or games; or
 - Is authorized to receive broadcasts of horse races under s. 550.6308, F.S. According to the Department of Business and Professional Regulation, there are 31 active permitholders operating at 27 different facilities.

Section 2. The bill amends s. 24.105, F.S., requiring the Department of the Lottery to approve retailer licensure applications within thirty days from receipt of the application. Any person holding a pari-mutuel permit who has been licensed pursuant to chapter 550, meets the definition of a video lottery retailer under s. 24.103(11) and has paid the fee required in s. 24.105(27), shall be deemed to have met all qualifications of licensure under this section. In addition, the department must:

- Have in place the capacity to support video lottery games at facilities of video lottery retailers by October 1, 2003.
- Hear and decide promptly and in reasonable order all video lottery related license applications and enforcement proceedings for suspension or revocation of licenses.
- Collect and disburse video lottery revenue due the department.
- Certify net terminal income of video lottery retailers by inspecting records or conducting audits.
- Maintain a list of licensed video lottery terminal vendors and a current list of all contracts between video lottery terminal vendors and video lottery retailers.

Within 10 days of approval of the application, the video lottery retailer shall pay to the department, a fee of \$2 million and on every July 1, thereafter. The \$2 million fee shall be deposited into the Education Enhancement Trust Fund to be available to be bonded for school capital facilities construction.

Section 3. The bill creates s. 24.125, F.S., providing for emergency rulemaking regarding the regulation of video lottery retailers, video lottery products, and video lottery vendors and specifications for video lottery terminals.

Section 4. The bill creates s. 24.126, F.S., providing that video lottery games may not be played by persons less than 18 years of age and requires that signage be posted in the pari-mutuel facilities to ensure the age requirement is enforced.

Section 5. The bill creates s. 24.127, F.S., to require that if a video lottery retailer for any reason fails to comply with the requirement to conduct a full schedule of races or games, the department

shall order the retailer to suspend its video lottery operation. The department may assess an administrative fine, not to exceed \$5,000 per video lottery terminal per day, against any retailer who fails to suspend its video lottery operation when ordered by the department.

Concerning video lottery terminals located on premises, each video lottery retailer shall determine the following:

- The number of video lottery terminals and where they are to be placed in the facility;
- The dates and hours for play;
- The mix of games that will be played;
- The staffing of video lottery terminal operations on the premises; and
- The minimum and maximum betting amounts and the payout.

Payouts must be within the range of 88 percent and 95 percent of the amount of value placed in the video lottery terminal. The department has sole discretion to permit the retailer to exceed 95 percent if the retailer's total annual payout does not exceed 95 percent.

Subsection (6) of s. 24.127, F.S., provides that net terminal income derived from video lottery operations must be distributed as follows:

1. Forty-two percent (42%) is deposited in the Video Lottery Administrative Trust Fund for transfer to the Education Enhancement Trust Fund.
 - a. The \$2 million annual fee paid by the permitholder pursuant to s. 24.105(27), shall be credited back to the permitholder on a weekly basis out of the Video Lottery Administrative Trust Fund until the total \$2 million is credited. However, weekly credits shall not exceed \$100,000 per week, per permitholder.
2. Seventy-five hundredths percent (.75%) to the Video Lottery Administrative Trust Fund for transfer to the Administrative Trust Fund of the Department of the Lottery.
 - a. Twenty-five percent of the .75 percent goes to the Department of Children and Families with a cap not to exceed \$5 million dollars annually for the compulsive gambling program.
3. Fifty-seven and twenty-five hundredths percent (57.25%) shall be retained by the video lottery retailer as compensation and must be distributed as follows:
 - a. Four and twenty-five hundredths (4.25%) as purses (purses are the cash portions of the prize for which a race or game is contested) for live performances conducted as a part of the retailer's pari-mutuel meet under ch. 550, F.S. However, if the retailer holds a license for intertrack wagering, then 4.25 percent shall be distributed as Florida thoroughbred breeders' awards and stallion awards and awards to owners of registered Florida-bred thoroughbred horses.
 - b. Four percent (4%) is deposited in the Video Lottery Purse Trust Fund to be distributed for purses as follows:
 - i. Fifty-eight percent (58%) to holders of valid thoroughbred racing permits
 - ii. Eight percent (8%) to holders of valid harness racing permits
 - iii. Seven percent (7%) to holders of valid jai alai permits
 - iv. Twenty-seven percent (27%) to holders of valid greyhound racing permits

These allocations must be made weekly. Amounts allocated to the Education Enhancement Trust Fund and the Administration Trust Fund must be remitted by electronic transfer within twenty-four hours after the allocation is determined.

Section 6. The bill creates s. 24.128, F.S., providing that vendors shall be licensed by the department by July 1, 2003, and emergency rule making authority is given to expedite the process.

Section 7. The bill creates s. 24.129, F.S., providing that having video lottery terminals in pari-mutuel facilities will not change the character of the pari-mutuel facility for local zoning purposes.

Section 8. The bill creates s. 24.130, F.S., providing standards for video lottery terminals.

Section 9. The bill creates s. 24.131, F.S., providing that every licensed video lottery terminal vendor shall submit a training program for the service and maintenance of terminals and equipment for approval by the department. The bill also provides that every video lottery terminal service employee must complete requirements of the manufacturer's training program before performing service, maintenance, or repairs on video lottery terminals or associated equipment.

Section 10. The bill creates s. 24.132, F.S., providing for the administration of the Video Lottery Purse Trust Fund. The proceeds of the trust fund shall be distributed to pari-mutuel permitholders to be distributed as purses as follows:

- Fifty-eight percent to holders of valid thoroughbred racing permits
- Eight percent to holders of valid harness racing permits
- Seven percent to holders of valid jai alai permits
- Twenty-seven percent to holders of valid greyhound racing permits

Distributions to permitholders from the Video Lottery Purse Trust Fund shall be determined by dividing the amounts paid in purses during the previous fiscal year by the amount of purses by those permitholders paid by all permitholders of the same class of permits statewide during the 2000-2001 fiscal year.

Section 11. The bill creates s. 24.133, F.S., requiring the owner of each facility at which video lottery games are conducted to post signs providing a telephone number that a person with a gambling problem can call.

Section 12. The bill amends s. 212.02, F.S., excluding from the definition of "coin-operated amusement machine" a video lottery terminal operated pursuant to chapter 24.

Section 13. The bill creates s. 24.134, F.S., creating the Compulsive Gambling Program. Specifically, the bill provides that the Alcohol, Drug Abuse, and Mental Health Program Office within the Department of Children and Family Services shall establish a program for public education, awareness, and training regarding problem and compulsive gambling and the treatment and prevention of problem and compulsive gambling.

Section 14. The bill authorizes that a video lottery retailer is entitled to a caterer's license pursuant to the provisions of s. 565.02 on days in which the pari-mutuel facility is open to the public for the purpose of video lottery play.

Section 15. This bill shall take effect upon becoming a law.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or cities to spend funds or take an action requiring the expenditure of funds; does not reduce the authority that cities or counties have to raise revenues in the aggregate; and does not reduce the percentage of a state tax shared with cities or counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill provides for two additional trust funds for disbursement of funds generated from the video lottery terminals that are created by separate legislation.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

In order for a pari-mutuel permitholder to be licensed as a video lottery retailer, the permitholder must pay an annual fee of \$2 million for deposit into the Education Enhancement Trust Fund to be available to be bonded for school capital facilities construction. The initial \$2 million fee shall be paid within 10 days of approval of the application, and then on July 1, each year thereafter. If all 31 active permitholders apply and qualify for licensure as a video lottery retailer, the \$2 million annual fee will raise \$62 million annually. The bill requires the Department of the Lottery to have in place the capacity to support video lottery games at facilities of video lottery retailers by October 1, 2003. Funds available for bonding could be as high as \$62 million in fiscal year 2003-04. It is estimated that the bonding capacity of the \$62 million is \$300 million to \$500 million.

The bill requires that 42 percent of the income from the operation of Video Lottery Terminals shall be deposited in the Video Lottery Administration Trust Fund for transfer to the Education Enhancement Trust Fund. The \$2 million annual fee paid by the permitholder must be credited back to the permitholder on a weekly basis out of the Video Lottery Administration Trust Fund until the total \$2 million is credited. However, credits shall not exceed \$100,000 per week. The maximum annual credit will be \$62 million.

The Revenue Estimating Conference has not adopted a fiscal impact on video lottery. During the 2002 Legislative Session, CS/SB 1298 & 1326 proposed the authorization of video lottery games by pari-mutuel permitholders, similar to this bill. CS/SB 1298 & 1326 provided for the distribution of 36 percent of net terminal revenue to education. The revenue estimate for education ranged from \$641 million to \$1 billion per year. Unofficial estimates for education for fiscal year 2003-04 range from \$600 million to \$2.0 billion. However, these unofficial estimates do not take into account the anticipated delay in implementation of 18 months to 2 years indicated by the Department of the Lottery. (See Related Issues below).

B. Private Sector Impact:

The pari-mutuel permitholders authorized to conduct video lottery will receive income from operation of the terminals. Such permitholders must pay an annual \$2 million fee, which will be credited back to the permitholder each year by the Department of the Lottery.

C. Government Sector Impact:

The Department of Lottery is required to conduct a background investigation for video lottery terminal service employees before the employee can become certified.

V. Technical Deficiencies:

None.

VI. Related Issues:

The Department of the Lottery maintains that they will not have the capacity to support video lottery games at facilities of video lottery retailers by October 1, 2003, due to the time necessary to issue the request for proposals, evaluate the proposals, and award the contract to the vendors. They estimate it will take them 18 months to 2 years to implement video lottery in Florida.

According to the latest statistics from Le Fleur's Fiscal 2002 VLT Special Report, as of June 30, 2002, seven states currently authorize video lotteries. For fiscal year 2001-02, these states realized government income from video lottery operation in the amount of: Delaware - \$200.2 million; Louisiana - \$155.9 million; Montana - \$43.7 million; Oregon - \$279.6 million; Rhode Island - \$148.9 million; South Dakota - \$103.6 million; and West Virginia - \$240.6 million.

VII. Amendments:

None.