

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 181 CS

Pari-mutuel Permitholders

**SPONSOR(S):** Cretul

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 342

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>17 Y, 0 N, w/CS</u>	<u>Morris</u>	<u>Liepshutz</u>
2) <u>Finance &amp; Tax Committee</u>	<u></u>	<u>Levin</u>	<u>Diez-Arguelles</u>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Licensed pari-mutuel permitholders are authorized to conduct intertrack wagering under specified conditions. The term "intertrack wagering" (ITW) means wagering on events broadcast between pari-mutuel facilities located within the state, including the rebroadcast of a simulcast signal. Current law requires a jai alai permitholder to operate a full schedule of live jai alai performances in order to participate in intertrack wagering.

This bill reduces the number of required live performances that constitute a full schedule from 100 to 40 for any jai alai permitholder, except those that conduct slot machine gambling, that conducted at least 100 live performances per year for 10 years after December 31, 1992. Presently, six of the seven operating jai alai permitholders will qualify for this reduced schedule.

This bill imposes a \$10,000 annual fee on inactive jai alai permits and requires that the revenue collected from that fee be used to promote the sport of jai alai in the state. There are currently three inactive jai alai permits in the state. Inactive jai alai permits will become void and escheat to the state if the permitholder elects not to pay the fee. The bill allows the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation to enact rules for distribution of the revenue collected from this fee. The cost to the agency for rules implementation and distribution of these funds is expected to be minimal.

The bill includes a hold-harmless provision for state revenues that requires jai alai permitholders taking advantage of this reduction to pay the same amount of tax as they paid during the last year in which they conducted at least 100 live performances. Therefore, the bill is not expected to have a fiscal impact on state revenue collections.

The bill provides an effective date of July 1, 2005.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--The bill decreases statutorily imposed conditions on some jai alai permitholders conducting intertrack wagering.

Provide limited government--The bill creates a new fee and creates additional authority for the Division of Pari-mutuel Wagering's to enact rules.

#### B. EFFECT OF PROPOSED CHANGES:

This bill amends s. 550.02(11), F.S., to modify the definition of what constitutes a full schedule of live performances for jai alai permitholders.

Intertrack wagering is pari-mutuel wagering on broadcasts of a horse or greyhound race or jai alai game transmitted from and performed live at, or a simulcast signal rebroadcast from, another in-state pari-mutuel facility. Under present law in order for a licensed jai alai permitholder to participate in intertrack wagering [ITW] the permitholder must conduct a full schedule of live performances during the previous year [see s.550.615(2), F.S.]. If the permitholder conducts a full schedule of live performances in the previous year it may conduct ITW on any class of pari-mutuel race or game for the entire ensuing year. For a jai alai permitholder a "full schedule" of live performances means that the permitholder must conduct a combination of at least 100 live evening or matinee performances. In the pari-mutuel statute a "performance" does not refer to one single jai alai game but rather means "a series of events, races, or games performed consecutively under a single admission charge." A jai alai permitholder may conduct both a matinee and evening performance in one calendar day.

This bill reduces the number of required live performances from 100 to 40 for any jai alai permitholder, except those conducting slot machine gambling, that conducted at least 100 live performances per year for 10 years after December 31, 1992. With this reduction in the number of required live performances, it is possible that a season of 40 live evening and matinee performances could be completed in one month. Any jai alai permitholder who elects to conduct slot machine gambling, if that option is made available, will not be able to avail themselves of this reduction and must continue to conduct a minimum of 100 live performances in order to conduct intertrack wagering.

This bill also imposes a \$10,000 fee on inactive jai alai permits. The jai alai permit will become void and escheat to the state if the fee is not paid by June 30 of each year. There are currently three inactive jai alai permits in the state: Tampa Jai Alai, Volusia Jai Alai, and Palm Beach Jai Alai. Revenue collected from this fee is to be distributed by the Division jointly to the National Association of Jai Alai Frontons and the International Jai Alai Players Association to be used to promote the industry in the state. The Division is granted rule-making authority for the distribution of these funds.

In addition, this bill contains a provision ensuring that there will be no reduction in state revenue as a result of the reduction in the number of live performances. Section 550.09511, F.S., is amended to require that any permitholder taking advantage of this reduction in live performances will pay to the state the same aggregate amount of daily license fees, admissions tax, and tax on live handle as that permitholder paid to the state during the most recent prior year in which the permitholder conducted at least 100 live performances. In FY 2003-04, jai alai permitholders paid a total of \$630,178 in tax revenue into the Pari-mutuel Wagering Trust Fund.

Florida was the first state in the nation to conduct jai alai performances with the first fronton built in 1926 and Florida is now the only state that has pari-mutuel wagering on live jai alai games. There are currently seven jai alai permitholders operating from five frontons in central and south Florida: Ocala Jai Alai, Florida Jai Alai in Fern Park, Fort Pierce Jai Alai, Dania Jai Alai, Summersport Jai Alai operating from the Dania facility, Miami Jai Alai, and Summer Jai Alai operating from the Miami facility. At present each of those permitholders, with the exception of Ocala Jai Alai, appears to qualify for the reduction in performances provided for in this legislation.

The bill has an effective date of July 1, 2005.

C. SECTION DIRECTORY:

Section 1 amends the definition of "full schedule of live racing or games" in s. 550.002(11), F.S.

Section 2 creates new subsections (4) and (5) in s. 550.09511, F.S., relating to jai alai taxes and fees.

Section 3 provides an effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

In FY 2003-04, the seven operating jai alai permitholders paid \$630,178 in state tax revenue into the Pari-mutuel Wagering Trust Fund. This legislation provides that any permitholder taking advantage of the reduction in the number of live performances must continue to pay the same amount of tax as the permitholder paid to the state during the last year in which they conducted at least 100 live performances. Therefore, the bill is not expected to have an impact on tax collections.

The bill imposes a \$10,000 annual fee on inactive jai alai permits and requires that the fee pass through the Pari-mutuel Wagering Trust Fund for distribution to the National Association of Jai Alai Frontons and the International Jai Alai Players Association. There are currently three inactive jai alai permits in the state. The fee on inactive jai alai permits is expected to generate \$30,000 annually.

2. Expenditures:

According to the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation, there will be a minimal one-time cost associated with the rules implementation provided for in the bill and a minimal cost associated with actual distribution of the funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill is not expected to impact local government revenues.

2. Expenditures:

This bill is not expected to require any expenditure by local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Jai Alai Players

Florida is the only state in the nation to conduct pari-mutuel wagering on live jai alai performances. Some players perform at more than one jai alai facility but must also supplement their income by taking other forms of employment. A spokesperson for the jai alai players association expressed the concern that a 60% reduction in the number of live performances allowed for in this legislation will adversely impact wages paid to jai alai players. Further, the spokesperson expressed the concern that a reduction in the number of live performances will make it difficult to attract quality players from Spain or other nations for a shortened meet.

Jai Alai Permitholders

Jai Alai permitholders holding inactive permits will be required to pay an annual \$10,000 fee to the Division or lose their permit. There are currently three inactive jai alai permits in the state.

The bill requires that this fee pass through the Pari-mutuel Wagering Trust Fund for distribution to the National Association of Jai Alai Frontons and the International Jai Alai Players Association and is to be used by those organizations to promote the professional sport of Jai Alai in the state.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The annual \$10,000 fee to promote the sport of jai alai may be found to be a violation of the First Amendment free speech rights of the inactive jai alai permit holders. A similar assessments on beef cattle has been held to violate the First Amendment.

In the beef industry, the Beef Promotion and Research Act of 1985, 7 USC s.2901 et seq. ("The Beef Act") requires beef producers to pay a transaction-based assessment on cattle. The assessment is \$1 per head on the sale of live domestic and imported cattle, in addition to a comparable assessment on imported beef and beef products. The funds from the beef checkoff program are designated for the promotion and advertising of beef and beef products, research, consumer information, and industry information.

Beef producers filed suit challenging the Beef Checkoff Program alleging among other things that the program violated their First Amendment free speech right by compelling them to fund speech with which they did not agree. *Northern Division in Livestock Marketing Association et al. v. USDA and dNebraska Cattlemen, Inc. et al.*, 207 F. Supp. 2d 992. For example, one producer objected to the checkoff funds being used to advertise beef in general rather than only American grown beef. The court ruled that the Beef Checkoff Program was unenforceable and unconstitutional. The USDA appealed.

On March 10, 2003 the United States Court of Appeal for the Eighth Circuit upheld the lower court's determination that the Beef Checkoff Program is unenforceable and an unconstitutional infringement upon beef producer's First Amendment free speech right. *Livestock Marketing Association v. United States Department of Agriculture*, 335 F. 3d 771. The court found that the producers were forced to join in the speech (advertising) that they did not agree with and had no meaningful opportunity to avoid the assessment.

While CS/HB 181 does not create a "per item" fee, the is required and it will be used for advertising. It may be in the best interests of the state to add a "savings clause" which states that if the fee is found to be unconstitutional, then the fee is struck, but the remaining parts of the bill continue to be law.

**B. RULE-MAKING AUTHORITY:**

Assessed annual \$10,000 fees are to be divided between the National Association of Jai Alai Frontons and the International Jai Alai Players Association. The Department of Business Regulation, Division of Pari-mutuel Wagering is authorized to adopt rules for the orderly distribution of the fees.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On February 8, 2005, the Committee on Business Regulation adopted two amendments to HB 181 and reported the bill favorably [17 yeas; 0 nays] with committee substitute.

The first amendment by Representative Attkisson added a provision restricting the allowable reduction in the number of live performances to only those jai alai permitholders that do not operate slot machines. If operation of slot machines becomes available to a jai alai permitholder and the permitholder chooses to conduct slot machine gambling, the permitholder will be required to conduct a minimum of 100 performances annually in order to continue to qualify to conduct intertrack wagering.

The second amendment by Representative Greenstein added a provision that requires jai alai permitholders holding inactive permits to pay a \$10,000 fee annually. Failure to pay the annual fee will result in the permit becoming void and escheating to the state. Revenues collected from this fee are to be distributed by the Division of Pari-mutuel Wagering jointly to the National Association of Jai Alai Frontons and the International Jai Alai Players Association and used to promote the professional sport of jai alai in the state. The amendment allows the Division to enact rules necessary for the distribution of the proceeds.