

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: PCS/SB 674 (730458)

INTRODUCER: Regulated Industries Committee and Senator Jones

SUBJECT: State Lottery

DATE: March 19, 2010

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------|----------------|-----------|--------------------|
| 1. | Harrington | Imhof | RI | Pre-meeting |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The proposed committee substitute (PCS) expands the player-activated games that the Department of the Lottery (department) may make available to play. The player-activated machines may dispense instant tickets and may reveal the results of the ticket in an entertainment format. The PCS provides that the department may investigate Limited Liability Companies prior to entering into contracts with such organizations. The PCS provides that the department cannot contract for a major procurement with any organization if the managing member has been convicted of a felony. The PCS amends the requirements for minority retailers, expanding the department’s ability to contract with one minority group. The PCS also provides that a retailer who fails to remit funds to the department commits a third degree felony.

The PCS shall take effect July 1, 2010.

The PCS amends the following sections of the Florida Statutes: 24.105, 24.111, 24.113, and 24.114.

II. Present Situation:

Legislative Purpose and Intent

The Department of the Lottery is authorized by Art. X, s. 15, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., provides legislative purpose and intent in regard to the lottery:

(1) The purpose of this act is to implement s. 15, Art. X of the State Constitution in a manner that enables the people of the state to benefit from significant additional moneys for education and also enables the people of the state to play the best lottery games available.

(2) The intent of the Legislature is:

(a) That the net proceeds of lottery games conducted pursuant to this act be used to support improvements in public education and that such proceeds not be used as a substitute for existing resources for public education.

(b) That the lottery games be operated by a department of state government that functions as much as possible in the manner of an entrepreneurial business enterprise. The Legislature recognizes that the operation of a lottery is a unique activity for state government and that structures and procedures appropriate to the performance of other governmental functions are not necessarily appropriate to the operation of a state lottery.

(c) That the lottery games be operated by a self-supporting, revenue-producing department.

(d) That the department be accountable to the Legislature and the people of the state through a system of audits and reports and through compliance with financial disclosure, open meetings, and public records laws.

Section 24.104, F.S., requires the department to operate the state lottery “so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens.”

Player-Activated Games

Section 24.105(9), F.S., requires the department to adopt rules governing the establishment and operation of the lottery. The rules must govern the type of games played, the sale price of tickets, the number and size of prizes, the method of selecting winning tickets, the manner of prize payment, the frequency of drawings, the number and type of locations where tickets may be purchased, the method to be used in selling tickets, the compensation for retailers, and such other matters necessary for the efficient or economical operation of the lottery or for the convenience of the public.

Section 24.105(9)(a), F.S., provides limitations on the type of games the department may offer for play. Specifically, the name of an elected official cannot appear on the ticket for any game. Money cannot be dispensed from any electronic lottery terminal or device. The section also limits the type of player-activated machines that may be utilized. Section 24.105(9)(a)4., F.S., provides that a player-activated machine must: be under the supervision and within the direct line of sight of the lottery retailer to ensure that the machine is monitored and 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 through the use of a lockout device that maintains the machine's deactivation for a period of no less than 5 minutes; and be designed to prevent its use or conversion for use in any manner other than the dispensing of instant lottery tickets. Authorized machines may dispense change to players purchasing tickets but may not be utilized for paying the holders of winning tickets of any kind.

Procurements

Section 24.111(1), F.S., provides that the department may enter into contracts for goods and services necessary to operate the lottery. The department may not contract out the total operation and administration of the lottery. In all procurement decisions, the department must take into consideration the sensitive material of the lottery. The department must evaluate the competence, quality of product, experience, and timely performance of the vendors. The department must investigate the financial responsibility, security, and integrity of each vendor with which it intends to negotiate a contract for a major procurement. Such investigation must include an investigation of the financial responsibility, security, and integrity of all of the following:¹

- If the vendor is a corporation, the officers, directors, and each stockholder in such corporation;
- If the vendor is a trust, the trustee and all persons entitled to receive income or benefit from the trust;
- If the vendor is an association, the members, officers, and directors; and
- If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.

Currently, s. 24.111(1), F.S., does not include officials of limited liability companies² in the list of information which must be disclosed and investigated, as it does with corporations and other types of legal entities.

Section 24.111(4), F.S., provides that the department may not contract for a major procurement with any vendor, or any of the vendor's officers, directors, trustees, partners, or joint venturers has been convicted of or entered a plea of guilty or nolo contendere to, a felony committed in the proceeding 10 years, regardless of adjudication. However, the department may contract with such a vendor or person if the vendor or individual has been pardoned or the vendor's civil rights have been restored, the vendor or individual has engaged in the kind of law-abiding commerce and good citizenship that would reflect well upon the integrity of the lottery after such a conviction, or if the vendor has terminated the individual whose actions directly contributed to the vendor's conviction or entry of plea.

Minority Business Enterprises

Section 24.113(1), F.S., provides that it is the intent of the Legislature that the department encourages participation by minority business enterprises.³ The section provides that 15 percent of the retailers must be minority business enterprises and no more than 35 percent of such retailers can be owned by the same type of minority person. According to the department, in a recent annual financial audit of the Lottery, the Office of the Auditor General reported that Florida Lottery retailers comprising one minority type (Asian American) totaled well over 60%

¹ Section 24.111(2), F.S.

² See ss. 608.401-608.705, F.S., cited as "Florida Limited Liability Company Act."

³ "Minority business enterprise" is defined in s. 288.703(2), F.S., as a small business that is at least 51 percent owned by minority persons who are members of an insular group that is a particular racial, ethnic, or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group.

of the total number of minority retailers.⁴ This is in conflict with Section 24.113, which requires that no more than 35 percent of such retailers shall be owned by the same type of minority person as defined by Section 288.703. In order to comply, the Lottery would have to drop well over 30 percent of Asian American retailers and would be prevented from recruiting new retailers from that particular minority group.

Lottery Transactions

Section 24.114, F.S., provides procedures for the handling of lottery transactions. Section 24.114(1), F.S., provides that all monies received by the retailer, less the commission earned by the retailer and amount paid out as prizes, shall be remitted to the department. Section 24.114(3), F.S., provides that the retailer is responsibility for all tickets received from the department. Tickets shall be deemed to have been purchased if they are not returned to the department.

Under current law, it is not a crime for a retailer to fail to remit lottery monies collected to the department. From October 28, 2008 through October 19, 2009, the department lost approximately \$2.7 million due to lack of clear statutory authority to seek possible criminal charges against retailers who failed to make contractually agreed upon financial payments.⁵ According to the department some State Attorneys believe current law makes it a criminal violation for retailers that do not have sufficient funds in their account to cover the electronic funds transfer to the state. Other State Attorneys express uncertainty about their ability to prosecute such cases under current law.

III. Effect of Proposed Changes:

The PCS amends s. 24.105, F.S., to expand the type of player-activated machines that the department may utilize. The PCS provides that player-activated machines may reveal the results of instant lottery tickets in an entertainment format and may permit the player to redeem a winning instant ticket to purchase more instant tickets.

The PCS amends s. 24.111, F.S., to add limited liability companies to the list of vendors who the department must investigate for financial responsibility, security, and integrity. The PCS provides that no contract for a major procurement shall be entered if a managing member has been convicted of a felony.

The PCS amends s. 24.113, F.S. to remove a provision limiting the percentage of the same type of minority retailer that the department may contract with to 35 percent.⁶

The PCS amends s. 24.114, F.S., to provide a penalty for a retailer who fails to remit funds to the department as required. The PCS provides that the penalty is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, and 775.084, F.S.⁷

⁴ See *infra* at n. 6.

⁵ According to the department, the impact of \$2.7 million dollars to education is nearly 1,000 students who didn't receive Bright Future Scholarships or 2 schools that did not receive a new 6-classroom wing addition.

⁶ The 2004 Office of the Auditor General annual financial audit of the department indicated that 63% of lottery retailers are comprised of one minority type (Asian Americans), which conflicts with the current law requirement that requires no more than 35% to be from one group type.

The PCS also deletes the requirement for liquidated damages in contracts greater than \$25,000. Instead, liquidated damage provisions may be included in all contracts with the department.⁸ The PCS also contains amendments to conform provisions to current bill drafting conventions.

The PCS provides an effective date of July 1, 2010.

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:

Expanding the type of player activated gaming machines may result in an increase in lottery retailers that offer lottery games. An increase in vendors and tickets sold will increase the transfer of funds to the Education Enhancement Trust Fund.

The impact conference has not estimated the impact on the criminal justice system.

VI. Technical Deficiencies:

None.

⁷ A third degree felony is punishable by a fine not to exceed \$5,000 and a prison term not to exceed five years. The department indicated that the criminal penalty is similar to that of the Department of Revenue as it relates to the collection of state sales taxes. *See*, ss. 212.054, 212.085, 212.12, and 212.15, F.S.

⁸ *See*, ss. 24.111(6) and 24.112(10), F.S. Liquidated damage provisions are required in all contracts with vendors and may be included in all contracts for goods and services. The department wishes to include a liquidated damage provision in all contracts, not just those in excess of \$25,000. The department stated that removing the limitation on contracts in excess of \$25,000 will protect the financial interest of Florida.

VII. Related Issues:

It is unclear what impact expanding the type of player activated gaming machines may have on any compact negotiations with the Seminole Tribe of Florida.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
