

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 Criminal Justice Committee

BILL: CS/CS/SB 674

INTRODUCER: Criminal Justice Committee; Regulated Industries Committee; and Senator Jones

SUBJECT: State Lottery

DATE: April 19, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Fav/CS
2.	Erickson	Cannon	CJ	Fav/CS
3.			GO	
4.			WPSC	
5.			RC	
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill does the following:

- Expands the player-activated games that the Department of the Lottery (department) may make available to play (instead of one machine that may dispense instant tickets, the bill authorizes three types of machines to dispense either instant tickets or online tickets);
- Provides specifications regarding these player-activated games, their permissible use, and restrictions on their use;
- Provides that the department may investigate limited liability companies prior to entering into contracts with such organizations;
- Provides that no contract for a major procurement shall be entered if a managing member has been convicted of a felony;
- Provides that the department is authorized (rather than required under current law) to lease or purchase instant ticket vending machines;
- Provides that liquidated damage provisions may be included in all vendor contracts with the department;
- Amends the requirements for minority retailers, expanding the department's ability to contract with one minority group; and

- Provides that a retailer who fails to remit funds to the department commits a first degree misdemeanor.

Player-activated machines authorized by the bill mirror the “Lottery Vending Machine” definition on page 10 of the Gaming Compact Between the Seminole Tribe of Florida and the State of Florida.

The bill 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 s. 15, Art. X of the State 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 all of the following:

- 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.
- 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. This section also limits the type of player-activated machines that may be utilized.

Section 24.105(9)(a)4., F.S., provides the following requirements regarding a player-activated machine:

- The 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;
- The machine must 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
- The machine must 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.

¹ Section 24.111(2), F.S.

- 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 if such vendor or person 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 vendor or person if the vendor or person has been pardoned or the vendor's civil rights have been restored, the vendor or person 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 person 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 encourage participation by minority business enterprises.³ This 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 percent of the total number of minority retailers.⁴ This is in conflict with Section 24.113, F.S., which requires that no more than 35 percent of such retailers shall be owned by the same type of minority person as defined by s. 288.703, F.S. 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.⁵

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 responsible 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

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.

⁴ *Florida Lottery 2010 Legislative Priorities* (undated), Department of the Lottery (on file with the Senate Committee on Criminal Justice).

⁵ *Id.*

charges against retailers who failed to make contractually agreed upon financial payments.⁶ 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.⁷

III. Effect of Proposed Changes:

The bill does the following:

Section 1 amends s. 24.105(9)(a), F.S., to expand the type of player-activated machines that the department may utilize. Instead of one machine that may dispense instant tickets, the amendment authorizes three types of machines to dispense either instant tickets or online tickets.

The first machine may dispense pre-printed instant lottery tickets but may not reveal or read the results of the ticket. The machine may not include or make use of video reels or mechanical reels or other video depictions of a slot machine or casino game themes or titles for game play. The first type of machine is similar to what the lottery is currently making available to lottery retailers.

The second type of machine may dispense pre-determined electronic instant lottery tickets and may display the results of the ticket on a video screen. In order to reveal the results, the player must touch an image of the ticket on the screen. The machine may not permit a player to redeem winnings or make use of video reels or mechanical reels or simulate the play of any casino game. Retailers who offer the second type of machine are prohibited from being paid more than the retailer would receive from the sale of a paper instant lottery ticket. The second type of machine cannot be installed in any licensed pari-mutuel facilities.

The third type of machine may dispense a paper lottery ticket with numbers selected by the player or randomly by the machine. The machine may not reveal the winning numbers to the player. The winning numbers must be selected at a subsequent time and different location through a drawing by the Florida Lottery. The machine may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino-game themes or titles for game play. The machine may not be used to redeem a winning ticket.

The specific player-activated machines authorized in this section mirror the “Lottery Vending Machine” definition on page 10 of the Gaming Compact Between the Seminole Tribe of Florida and the State of Florida. The bill also specifies that no location may have more than 10 machines.

Section 2 amends s. 24.111, F.S., to add limited liability companies and their officers, directors, members, managers, and managing members to the list of vendors who the department must investigate for financial responsibility, security, and integrity.

⁶ *Id.* 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.

⁷ *Id.*

The bill provides that no contract for a major procurement shall be entered if a managing member has been convicted of a felony.

The department is authorized (rather than required under current law) to lease or purchase instant ticket vending machines.

The bill removes a provision in s. 24.111, F.S., which requires that every contract in excess of \$25,000 entered into by the department pursuant to this section contain a provision for payment of liquidated damages to the department for any breach of contract by the vendor.⁸ Instead, liquidated damage provisions may be included in all vendor contracts with the department.

Section 3 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.⁹

Section 4 amends s. 24.114, F.S., to provide that a retailer who fails to remit funds to the department as required commits a first degree misdemeanor.¹⁰

Section 5 provides that bill takes effect on July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸ See ss. 24.111(6) and 24.112(10), F.S. Liquidated damage provisions are required in all contracts with retailers and may be required for vendor contracts for goods and services. The department states: "Liquidated damage clauses are not necessarily appropriate in every contract, simply because they exceed \$25,000. This amendment would authorize such clauses to be included where they are beneficial to the state's financial interests but not automatically require them in all contracts simply because they exceed \$25,000." *Florida Lottery 2010 Legislative Priorities, supra*.

⁹ As previously noted, the 2004 Office of the Auditor General annual financial audit of the department indicates 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. *Florida Lottery 2010 Legislative Priorities, supra*. The department states: "These actions would not benefit any minority group but would be harmful to Lottery sales. Removing the 35% cap would alleviate this audit issue without harming Lottery sales or the interests of any minority group." *Id*.

¹⁰ A first degree misdemeanor is punishable by up to 1 year in jail, a fine of up to \$1,000, or both imprisonment and a fine. The department states that it believes a criminal penalty "would reduce the bad debt situation and help with the collection of debts that do occur." *Florida Lottery 2010 Legislative Priorities, supra*.

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 bill creates a first-degree misdemeanor. It is not anticipated that the bill will have any prison bed impact because a first degree misdemeanor is not punishable by a state prison sentence. Jail bed impact, if any, is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On April 7, 2010, the Seminole Tribe entered into a Compact for exclusivity over Class III and “other casino-style” gaming with the Governor. The Compact is currently before the Legislature for possible ratification. The additional player-activated lottery dispensing machines authorized by the bill mirror the language in the Compact as allowable “Lottery Vending Machines” that the Legislature may authorize and that the department may utilize without triggering any issues with the Compact exclusivity provisions or payment provisions 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.)

CS by Criminal Justice on April 19, 2010:

- Expands the player-activated games that the Department of the Lottery (department) may make available to play (instead of one machine that may dispense instant tickets, the bill authorizes three types of machines to dispense either instant tickets or online tickets);
- Provides specifications regarding these player-activated games, their permissible use, and restrictions on their use; and
- Provides that a retailer who fails to remit funds to the department commits a first degree misdemeanor (in a previous version of the bill, this offense was a third degree felony).

CS by Regulated Industries on March 24, 2010:

- Expands the player-activated games that the Department of the Lottery (department) may make available to play;
- Provides that the player-activated machines may dispense instant tickets and may reveal the results of the ticket in an entertainment format;
- Provides that the department may investigate limited liability companies prior to entering into contracts with such organizations;
- Provides that no contract for a major procurement shall be entered if a managing member has been convicted of a felony;
- Provides that the department is authorized (rather than required under current law) to lease or purchase instant ticket vending machines;
- Provides that liquidated damage provisions may be included in all vendor contracts with the department;
- Amends the requirements for minority retailers, expanding the department's ability to contract with one minority group; and
- Provides that a retailer who fails to remit funds to the department commits a third degree felony.

B. Amendments:

None.