

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 883 Authority of the Division of Pari-mutuel Wagering to Adopt Rules

SPONSOR(S): Business & Consumer Affairs Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Consumer Affairs Subcommittee		Rojas	Creamer

SUMMARY ANALYSIS

The bill authorizes the Division of Pari-Mutuel Wagering, within the Department of Business and Professional Regulation (DBPR), to adopt rules related to, but not limited to, specifications and procedures of the required internal components of a slot machine, hardware, software, the random probabilities of winning plays, and the operation of the random-number generator of each slot machine.

The bill has no fiscal impact on state funds.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

DBPR's Division of Pari-Mutuel Wagering

The Division of Pari-Mutuel Wagering (the division) is a program area within the DBPR. From 1932 to 1969, Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within the Department of Business Regulation, and in 1993, the Department of Business Regulation became the Department of Business and Professional Regulation. The purpose of the Division of Pari-Mutuel Wagering is to ensure the health, safety, and welfare of the public, racing animals, and licensees through efficient, and fair regulation of the pari-mutuel industry in Florida in accordance with chs. 550, 551, s. 849.086, F.S., and ch. 61D, F.A.C.

The division's primary responsibilities include:

- ensuring races and games are conducted fairly and accurately;
- ensuring the safety and welfare of racing animals;
- collecting state revenue accurately and timely;
- issuing occupational and permitholder operating licenses;
- regulating pari-mutuel, cardroom and slot machine operations;
- ensuring that permitholders, licensees, and businesses related to the industries comply with state law; and
- serving as the State Compliance Agency for the Compact between the Seminole Tribe of Florida and the State of Florida.

The division has issued 50 wagering permits, and 5 non-wagering permits. There are 35 pari-mutuel permitholders currently operating at 29 facilities throughout Florida. Currently, 24 pari-mutuel facilities are operating cardrooms. There are seven pari-mutuel facilities that have been licensed to operate slot machines. Several locations have multiple permits that operate at a single facility. The breakdown by permit type is as follows:

- 16 Greyhound permits
- 3 Thoroughbred permits
- 1 Harness permit
- 2 Quarter Horse permit
- 6 Jai-Alai permits
- 1 track offering limited intertrack wagering and horse sales

The division collects revenue in the form of taxes and fees from permitholders for the conduct of gaming activities outlined above. Additionally, the division is the State Compliance Agency for oversight of the gaming compact with the Seminole Tribe. As part of the division's oversight duties, the division collects and verifies payments by the Seminole Tribe made to the State of Florida under the terms outlined in the Compact.

The division is divided into six functional areas:

- the Director's Office provides general oversight for administrative functions, division budget, spending plans, legislative analysis, and revenue collection;
- the Office of Auditing ensures the integrity of wagering activity by conducting various compliance and financial audits of permitholders;
- the Office of Investigations examines possible rule, statute, or criminal violations. In addition, this office also conducts background and criminal history checks of applicants for occupational licenses;

- the Office of Operations issues operating licenses to permit holders, business occupational licenses, and individual occupational licenses. This office coordinates the collection of specimen samples from racing animals to ensure that prohibited substances are not given;
- the Office of Slot Operations conducts day-to-day inspections at the slot facilities to ensure the integrity of the gaming activity; and
- the Compact Compliance Unit ensures compliance with all provisions outlined in the Seminole Gaming Compact between the Seminole Indian Tribe of Florida and the State of Florida.

The department currently has an interagency agreement with the Department of Revenue for the collection of taxes and fees.

Overview of Florida Gaming Laws and Regulations

In general, gambling is illegal in Florida. Chapter 849, F.S., governs the conduct of gambling in Florida. Section 849.15, F.S., prohibits the manufacture, sale, lease, play, or possession of slot machines. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S. Florida's gambling prohibition includes prohibitions against keeping a gambling house and running a lottery. Section 7, Art. X, of the Florida Constitution, prohibits lotteries, other than pari-mutuel pools authorized by law on the effective date of the Florida Constitution, from being conducted in Florida by private citizens.

Gambling is permitted at licensed pari-mutuel wagering tracks and frontons, by the state operated lottery, which must operate "so as to maximize revenues in a manner consistent with the dignity of the state and the welfare of its citizens," and by the Seminole Indian Tribe.

Chapter 849, F.S., contains other specific exceptions to the general gambling prohibition and authorizes certain gambling activities, such as cardrooms at pari-mutuel facilities, bingo, penny-ante poker, arcade amusement games, amusement games and machines, and game promotions. In Florida, if the gaming activity is not expressly authorized, then the gambling is illegal. Free-standing, commercial casinos are not authorized in Florida.

Pari-mutuel wagering and Cardrooms

The pari-mutuel industry in Florida is made up of greyhound racing, three different types of horseracing, and jai alai. The regulation of the pari-mutuel industry is governed by ch. 550, F.S., and is administered by the Division of Pari-Mutuel Wagering (division) within the Department of Business and Professional Regulation (DBPR). Chapter 550, F.S., provides specific licensing requirements, taxation provisions, and regulations for the conduct of the industry.

Pari-mutuel facilities within the state are allowed to operate poker card rooms under s. 849.086, F.S. No-limit poker games are permitted. The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. Authorized games and cardrooms do not constitute casino gaming operations. Instead, such games are played in a non-banking matter, i.e., the house has no stake in the outcome of the game. Such activity is regulated by the DBPR and must be approved by an ordinance of the county commission where the pari-mutuel facility is located. Each cardroom operator must pay a tax of 10 percent of the cardroom operation's monthly gross receipts.

Slot Machine Gaming at Pari-mutuel Facilities

Slot machine gaming at licensed pari-mutuels is governed by ch. 551, F.S. Pari-mutuel facilities that operate slot machine gaming are generally known as "racinos." During the 2004 General Election, the electors approved Amendment 4 to the state constitution, codified as Art. X, s. 23, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward counties upon an affirmative vote of the electors in those counties. In addition to the slot machines authorized under the Florida Constitution. Class III slot machines are also permitted in a charter county or a county that has a referendum approving slots that was approved by law or the Constitution, provided that such facility has conducted live racing for two calendar years preceding its application and

complies with other requirements for slot machine licensure. Currently, only existing pari-mutuel facilities in Miami-Dade County qualify for slot machine authorization. There are five pari-mutuels in those counties conducting slot machine gaming.

Slot machine licensees are required to pay a license fee of \$2 million per fiscal year. In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent. If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee must pay to the state, within 45 days after the end of the state fiscal year, a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year that resulted in the revenue shortfall.

On July 5, 2006, the division adopted Rule 61D-14.041, F.A.C., as part of its original slot machine regulations. This rule established a requirement that a slot machine have an internal random number generator, as well as establishing criteria for the operation of the random number generator. A slot machine's random number generator is a vital slot machine component that produces the random outcomes used in modern slot machine. The random numbers produced by the random number generator are utilized by a slot machine's programming to determine whether a play is a win or a loss. The determination of whether a play is a win or a loss is then presented by the slot machine's programming to the player through spinning wheels or video displays.

On February 28, 2011, a Rule Challenge Petition was filed with the Division of Administrative Hearings (DOAH) by Interblock USA, LLC, which manufactures gambling machines that play automated table games such as roulette and craps with physical wheels or dice. The results of those games are shared by multiple players at separate terminals. The petition challenged the division's authority to promulgate a rule that requires a slot machine to have a random number generator.

On March 11, 2011, Shuffle Master, Inc., which manufactures a variety of gaming devices, including slot machines, intervened in the case. Shuffle Master manufactures electronic games that play table games such as roulette and craps through the use of a random number generator and video presentation of results. The results of those games are shared by multiple players at separate terminals. After a motion hearing on March 18, 2011 regarding Interblock's challenge to the authority to require a slot machine to have a random number generator, Interblock and Shuffle Master filed a stipulation that changed the case to challenge the requirement of Rule 61D-14.041, F.A.C., that the random number generator be "internal" rather than shared by multiple player terminals.

On March 22, 2011, DOAH entered an order in the case found that the division does not have the authority under ch. 551, F.S., to promulgate a rule requiring a slot machine to have an internal random number generator. The reasoning of the ruling could be applied to other rules of the division setting forth standards for internal components of a slot machine. This could result in machines that are simply automated table games such as roulette and craps to be played at licensed slot machine facilities in Florida. The Final Order, which incorporated the reasoning of the March 22nd order, was entered on April 7, 2011. The Final Order is being appealed.

Proposed Changes

The bill authorizes the Division of Pari-Mutuel Wagering to adopt rules related to the:

- specifications of the required internal components of a slot machine (hardware and software), including location, configuration, functions of the components;
- procedures and specifications for the slot machine to ensure the random probabilities of winning plays; and
- specifications for the operation of the random-number generator of each slot machine.

Section 551.121(5), F.S., prescribes that a slot machine's random-number generator may not serve more than one station or terminal where a patron places their wager. It does however; provide that a slot machine, or the computer operating system linking the slot machine, may be linked by any means to other slot machines or computer operating system within the facility for progressive jackpot payouts.

B. SECTION DIRECTORY:

Section 1. Amends s. 551.103, F.S.; requiring the Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation to adopt rules regulating slot machines and providing specifications for the internal components of slot machines; requiring that the division adopt specifications and procedures to ensure random probabilities of winning plays and provide for the operation of random-number generators;

Section 2. Amends s. 551.121, F.S.; prohibiting a slot machine's random-number generator from serving more than one station or terminal where an individual player places his or her wagers; and

Section 3. Provides the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Division of Pari-Mutuel Wagering to adopt rules related but not limited to specifications and procedures of the required internal components of a slot machine, hardware, software, the random probabilities of winning plays, and the operation of the random-number generator of each slot machine.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES