

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Regulated Industries Committee

BILL: CS/SB 1376

INTRODUCER: Regulated Industries Committee and Senator Jones

SUBJECT: The Department of the Lottery

DATE: March 13, 2007      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.			GO	
3.			GA	
4.			RC	
5.				
6.				

**I. Summary:**

The bill provides that the Department of Lottery has the authority to hold patents and will notify the Department of State in writing whenever property rights by patent, copyright, or trademark are secured by the department.

This bill substantially amends section 24.105 of the Florida Statutes.

**II. Present Situation:**

The Department of the Lottery has the authority under s. 24.105(10), F.S., to hold copyrights, trademarks, and service marks and enforce those rights.

The Department of State has authority under ch. 286, F.S., to apply for, hold and enforce legal title to trademarks, patents, and copyrights on behalf of the State of Florida.<sup>1</sup>

On February 22, 2000, the Attorney General issued an advisory legal opinion to the Department of State advising that in order for the Department of State to apply for and enforce a patent on behalf of another agency, the agency had to have independent statutory authority to hold and enforce patents.<sup>2</sup>

<sup>1</sup> Sections 286.021 and 286.031, F.S.

<sup>2</sup> See Fla. AGO 2000-13 (2003).

## Copyright

Article I, s. 8, cl. 8 of the U.S. Constitution provides that Congress shall have the power to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

17 U.S.C. s. 102, provides in part, that copyright protections subsists ... in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

## Trademarks or Servicemarks

The United States Patent and Trademark Office<sup>3</sup> define trademarks and service marks as follows:

- A **trademark** is a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others.
- A **service mark** is the same as a trademark, except that it identifies and distinguishes the source of a service rather than a product. Throughout this booklet, the terms "trademark" and "mark" refer to both trademarks and service marks.

## Patents

Under 35 U.S.C. s. 101, whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent subject to the conditions and requirements of the act.

### III. Effect of Proposed Changes:

The bill provides that the department has the authority to hold patents and will notify the Department of State in writing whenever property rights by patent, copyright, or trademark are secured by the department.

The department states that the omission of patents was an oversight in the adoption of the original state lottery statute in 1987. In the process of developing new lottery game concepts and methods of play, the department believes it would be able to obtain patents on such "inventions" which, along with copyrights, trademarks, and service marks, need to be protected under U.S. patent laws.

The department stated that other state agencies currently have such authority. The department cited, s. 1004.23, F.S., which authorizes each state university, in its own name, to perform all things necessary to secure letters of patents on any work products and to enforce its rights therein. The state universities are authorized to license, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture or use thereof, on a royalty basis

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<sup>3</sup> [http://www.uspto.gov/web/offices/tac/doc/basic/trade\\_defin.htm](http://www.uspto.gov/web/offices/tac/doc/basic/trade_defin.htm) (last visited March 10, 2007)

or for such consideration as the university deems proper. Other examples cited by the department include s. 334.049, F.S., which provides patent authority for the Department of Transportation; s. 601.101, F.S., which provides such authority for the Department of Citrus; and s. 373.608, F.S., which provides authority for the water management districts.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department states that the department's ability to hold patents would create a new source for revenue for the Educational Enhancement Trust Fund (EETF), by introducing new methods of play to its current game mix. The department would also charge a licensing fee for other gaming organizations to use the patented product.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



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## **VIII. Summary of Amendments:**

None.

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

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