

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1551 Department of the Lottery and Pari-mutuel Facilities
SPONSOR(S): Environment & Natural Resources Council, Rivera
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environment & Natural Resources Council	12 Y, 2 N, As CS	Valenstein	Hamby
2) Policy & Budget Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill grants the Department of Lottery (DOL) the authority to obtain patents. The bill requires the DOL to notify the Department of State in writing whenever it secures a patent, just as it must when it secures a copyright or trademark.

The bill provides for the use of a limited number of Video Lottery Terminals (VTLs) at certain pari-mutuel sites in the State and the regulation of VTLs by the DOL. The bill allows VLTs at pari-mutuel sites that were in existence before January 1, 2007, and are located within a limited geographic area. A total of fourteen facilities may be affected by the bill: four in Broward County, one in Duval County, three in Hillsborough County, one in Lee County, four in Miami-Dade County, and one in Palm Beach County. In order to qualify, one of the facilities in Miami-Dade County must have their license reinstated pursuant to section 19 of this bill. (See page 6 for a more detailed discussion.)

The qualifying pari-mutuel facilities may operate no more than 1,000 VLTs. In addition, the four facilities in Broward County, which hold slot machine licenses, are limited to a combined total of no more than 1500 VLTs and slot machines.

The bill requires the portion of the estimated video lottery terminal net income that is remitted to the Operating Trust Fund for transfer to the Educational Enhancement Trust Fund to be subtracted from the aggregate required local effort for education funding.

The preliminary unofficial estimate provided by Office of Economic & Demographic Research (EDR) indicates that the fiscal impact from video lottery tax receipts will be approximately \$208 million to the Educational Enhancement Trust Fund on a recurring basis, once the provisions of the bill are fully implemented. However, there will also be a negative impact to the Educational Enhancement Trust Fund and sales tax receipts due to fewer people purchasing lottery tickets and other taxable items. The bill also provides additional allocations from the net terminal income derived from the video lottery games as follows:

- ◇ .5 percent will be paid by the video lottery retailer to the Department of Lottery to administer and regulate the operation of video lottery terminals. The funds that are in excess of the department's administrative costs will be transferred to the Educational Enhancement Trust Fund.
- ◇ .925 percent of the net terminal income will go to the county where the facility is located and .925 percent to a municipality, if the facility is located within its boundaries.

The Revenue Estimating Conference is scheduled to meet on this issue in the near future.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill expands the powers of the Department of Lottery.

Ensure Lower Taxes: This bill requires the remitted net income from video lottery terminals to be subtracted from the required local effort for education funding.

Empower Families: This bill restricts people less than 21 years of age from playing video lottery games and provides for the posting of signs with a telephone number that a person with a gambling problem can call, recognizing that gambling may be addictive.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION:

1. Patent Authority for the Department of Lottery

Section 8, Art. I of the U.S. Constitution provides that Congress has 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.

The Federal Copyright Act of 1976¹ protects

. . . 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.

To be subject to copyright, a work must be original, an independent creation of the author, and “fixed in any tangible medium,” such as the written word, sound recordings, and visual images. Copyright protection is available only for an *expression* of an idea and not for the idea itself.²

The United States Patent and Trademark Office³ 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.

The United State Patent and Trademark Office describes a patent as follows:

A patent for an invention is the grant of a property right to the inventor, issued by the Patent and Trademark Office. The term of a new patent is 20 years from the date on which the application for the patent was filed in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. US patent grants are effective only within the US, US territories, and US possessions.

¹ 17 U.S.C. 2. 102(a).

² *Circular 1, Copyright Protection*, U.S. Copyright Office

³ http://www.uspto.gov/web/offices/tac/doc/basic/trade_defin.htm (last visited March 10, 2007)

The right conferred by the patent grant is, in the language of the statute and of the grant itself, “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States or “importing” the invention into the United States. What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention.⁴

Works created by an officer or employee of the U.S. government as a part of his or her duties are in the public domain and may not be copyrighted.⁵ Federal law, however, does not prohibit copyright of works produced by other governmental entities.⁶ As a result, state and local governments may copyright their works, depending upon the law of the jurisdiction.⁷ Some states have permitted agencies to copyright agency-created software (some examples include California,⁸ Alaska,⁹ Minnesota,¹⁰ Oregon,¹¹ and North Dakota,¹² among others). As state governments do not come under the federal prohibition,¹³ Florida law determines whether an agency may obtain a copyright.¹⁴

An agency may not copyright or obtain a trademark or patent for its works without a statutory delegation of authority to do so.¹⁵ In Florida, a state agency is created by statute. As such, it has only those rights and privileges given to it by the Legislature:¹⁶

An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights of individuals.¹⁷

The Legislature has not provided general statutory authority to all agencies to copyright or patent their work products.¹⁸ The Legislature, however, has delegated the authority to obtain copyrights or patents to specific agencies. For example,

The Department of State is authorized to do and perform any and all things necessary to secure letters patent, copyright and trademark on any invention or otherwise, and to enforce the rights of the state therein; to license, lease, assign,

⁴ <http://www.uspto.gov/web/offices/pac/doc/general/whatis.htm>

⁵ 17 U.S.C. s. 5.

⁶ See *Bldg. Officials & Code Adm'rs v. Code Tech. Inc.*, 628 F.2d 730, 735-36 (1st Cir. 1980); and see, *County of Suffolk, N.Y. v. First Am. Real Estate Solutions*, 261 F.3d 179, 188 (2nd Cir. 2001).

⁷ The U.S. Copyright Office states in *The Compendium of Copyright Office Practices* that legislative enactments, judicial opinions and administrative rulings, whether federal or state, are ineligible for federal copyright protection for public policy reasons.

⁸ See, s. 6254.9 *Cal. Gov. Code*, in which agency-produced software is defined not to be a public record and which is permitted to be copyrighted.

⁹ Sec. 44.99.400, *Alaska Statutes*.

¹⁰ Sec. 13.03, *Minnesota Statutes*.

¹¹ Sec. 291.042, *Oregon Revised Statutes*.

¹² Sec. 44-04-18.5, *North Dakota Statutes*.

¹³ *Ibid.* See also, *Bldg. Officials & Code Adm'rs v. Code Tech. Inc.*, 628 F.2d 730, 735-36 (1st Cir. 1980); and see, *County of Suffolk, N.Y. v. First Am. Real Estate Solutions*, 261 F.3d 179, 188 (2nd Cir. 2001).

¹⁴ *Microdecisions, Inc.*, *supra* at 874.

¹⁵ AGO 2000-13.

¹⁶ *Seaside Properties, Inc., v. State Road Department*, 190 So.2d 391 (3rd DCA 1966).

¹⁷ *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (5th DCA 1985).

¹⁸ See, *Microdecisions, Inc. v. Skinner*, 889 So.2d 871 at 875 (2nd DCA 2005), noting that no statute authorizes a county property appraiser to hold a copyright. See also, AGO 2003-42, noting no statute generally authorizes counties or county agencies to secure copyrights. See also, AGO 2000-13 holding that “a state agency is not authorized to secure or hold a trademark in the absence of specific statutory authority to do so.”

or otherwise give written consent to any person, firm or corporation for the manufacture or use thereof, on a royalty basis, or for such other consideration as said department shall deem proper; to take any and all action necessary, including legal actions, to protect the same against improper or unlawful use or infringement, and to enforce the collection of any sums due the state¹⁹

In addition, the Legislature has delegated statutory authority to the Department of Transportation,²⁰ the Department of Citrus,²¹ water management districts,²² and the Florida Institute of Phosphate Research²³ to obtain copyrights, patents, and trademarks.²⁴

In some instances, the Legislature has *required* an agency to obtain a copyright. For example, the Department of State (DOS) is required to obtain a copyright for the Florida Administrative Code.²⁵

Section 286.021, F.S., establishes legal title to patents, trademarks, and copyrights obtained by the state or any of its boards, commissions, or agencies in the DOS. Consent of the DOS is required for use.²⁶ There are, however, numerous statutory exceptions to this general rule that establish legal title in other agencies.²⁷

On February 22, 2000, the Attorney General issued an advisory legal opinion to the DOS advising that in order for the DOS to apply for and enforce a patent on behalf of another agency, that other agency had to have independent statutory authority to hold and enforce patents.²⁸

Although the DOL was delegated authority by the Legislature to hold copyrights, trademarks, and service marks, it has not been granted the right to hold patents.

2. Video Lottery Terminals

Section 7, Art. X of the State Constitution allows for the operation of a state-operated lottery. The Florida Lottery was established by the Legislature in 1987 and codified as ch. 24, F.S. Under s. 24.102, F.S., all net proceeds from lottery games are to be used to support improvements to public education.

Currently, Video Lottery Terminals (VLTs) are not allowed in the State. The only player activated lottery machines are those that dispense instant lottery game tickets following the insertion of a coin or currency by a ticket purchaser pursuant to s. 24.105(9)4., F. S. While not in existence in Florida, video lottery terminals²⁹ or video game machines are utilized in a number of other states:

¹⁹ Section 286.031, F.S., originally enacted by s. 2, ch. 21959 (1943).

²⁰ Section 334.049, F.S.

²¹ Section 601.101, F.S.

²² Section 373.608, F.S.

²³ Section 378.101, F.S.

²⁴ This list is not a comprehensive list of all delegations of statutory authority to obtain copyrights, patents, or trademarks.

²⁵ Section 120.55(1)(a) 1., F.S.

²⁶ Originally enacted by s. 1, ch. 21959 (1943). See AGO 2000-13 noting that “[n]othing in these sections (referring also to s. 286.031, F.S.) would authorize the Department of State to apply for trademarks on behalf of an agency that could not demonstrate *independent statutory authority* for securing a trademark [*emphasis added*].”

²⁷ See, for example, s. 331.355, F.S., vesting ownership in Space Florida and s. 334.049, F.S., vesting ownership in the Department of Transportation.

²⁸ See Fla. AGO 2000-13 (2003).

²⁹ According to the latest information provided by NCSL: 2006 State of the States, The AGA Survey of Casino Entertainment http://www.americangaming.org/assets/files/2006_Survey_for_Web.pdf, La Fleur’s Fiscal 2006 VLT Special Report, published by TLF Publications; website: <http://www.lafleurs.com>, and information from Albany Law School white paper on “*What is a VLT*” 10/17/2003.

South Dakota

South Dakota was the first state to authorize video lottery terminals in 1987. The terminals are permitted in lounges and bars that are authorized to sell alcoholic beverages with a maximum of ten terminals per establishment. South Dakota defines a video lottery machine to mean “any electronic video game machine that upon insertion of cash is available to play or simulate the play of a video game, including but not limited to video poker, keno, or blackjack, authorized by the commission utilizing a video display and microprocessors in which by chance the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, or tokens.”

Oregon

Oregon authorized video lottery terminals in 1991. It allows video lottery terminals in licensed establishments that sell alcoholic beverages. Oregon does not define the specific games that make up a video lottery but provides that the lottery commission “may initiate a game or games using video devices.”

Rhode Island

Rhode Island authorized video lottery terminals in 1992. It limits the terminals to pari-mutuel licensees. It defines video lottery machines as “any electronic computerized video game machine that, upon the insertion of cash, is available to play a video game authorized by the lottery commission. . . .”

Delaware

Delaware authorized video lottery machines at its three pari-mutuel facilities in 1994. It defines a video lottery machine to mean “any machine in which bills, coins, or tokens are deposited in order to play a game of chance in which the results including options available to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both. .”

West Virginia

West Virginia allows video lottery terminals at racetracks and at certain establishments licensed to sell alcoholic beverages. It defines a video lottery game and video lottery broadly so that the game does not have to be based solely on chance and it provides a multitude of payment options.

Louisiana

Louisiana authorized video gaming in June 1992. It permits machines that play video draw poker at hotels, racetracks, OTB parlors and truck stops. It defines the video draw poker device in part, as any unit, mechanism, or device that upon insertion of cash is available to play or simulate the play of the game of draw poker or other card games using a cathode ray tube or video display screen where the player may win games or credits that can be redeemed for cash only.³⁰

Montana

Montana authorized video lottery gaming in 1986. It allows bingo machines which are defined as an electronic video gambling machine that, upon insertion of cash, is available to play bingo. The machine uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.³¹ The machines may be operated at retail sites that hold liquor licenses.

³⁰ La. Rev. Stat. Ann. Ch. 6, ss. 301-326 (2007).

³¹ Mont. Code Ann. s. 23-5-602 (2007).

New Mexico

New Mexico authorized video lottery gaming in 1999. It allows machines at five racetracks and 65 nonprofit operators. It defines a gaming machine for purposes of the act as a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate a game, whether the payoff is made automatically from the machine or in any other manner.³²

New York

New York authorized video lottery gaming at its racetracks, or at any other racetrack licensed under article three of the racing pari-mutuel wagering and breeding law as the “New York state exposition” in 2003.³³

EFFECT OF PROPOSED CHANGES:

1. Patent Authority for the Department of Lottery

Although the DOL was delegated authority by the Legislature to hold copyrights, trademarks, and service marks and to enforce its rights thereto when it was created in 1987, it has not been granted the right to hold patents. This bill grants the DOL the authority to obtain patents, as well. The bill requires the DOL to notify the DOS in writing whenever it secures a patent, just as it must when it secures a copyright or trademark.

2. Video Lottery

The bill provides statutory authority for Video Lottery Terminals (VTLs). The bill grants overall control of VTLs to the DOL and provides a start date of January 1, 2008, to have in place the capacity to support video lottery games at facilities of video lottery retailers. Each lottery terminal shall be linked, directly or indirectly, to a computer system approved by the DOL.

The bill allows VLTs in a limited geographic area. Fourteen facilities may be affected by the bill: four in Broward County, one in Duval County, three in Hillsborough County, one in Lee County, four in Miami-Dade County, and one in Palm Beach County. In order to qualify, Hialeah Park Racetrack in Miami-Dade County must have their license reinstated pursuant to section 19 of this bill. The affected facilities are:

County	Facility name
Broward	Pompano Park, Mardi Gras Race Track, Summer Sport Jai Alai, Gulfstream Park
Duval	Jacksonville Kennel Club
Hillsborough	Tampa Bay Downs, Derby Lane, Tampa Greyhound Track
Lee	Naples Fort Myers Greyhound
Miami-Dade	Tropical Park, Summer Jai Alai, Flagler Greyhound, Hialeah Park Racetrack
Palm Beach	Palm Beach Kennel Club

The bill accomplishes these goals in the manner listed below.

Section 1 amends s. 24.103, F.S., and includes the following video lottery definitions:

- ◇ “Video lottery game” means an electronic game of chance and progressive games where the jackpot grows and accumulates.
- ◇ “Video lottery terminal” (VLT’s) is defined as a mechanical, electronic, computerized gaming device that is a technological aid to the playing of the game of bingo and that offers wagering on the game of bingo as defined in s. 849.0931, and is capable of being linked to a centralized

³² N.M. Admin. Code tit. 15.1.16 (2007).

³³ N.Y. [law] s. 1617-a (McKinney 2007).

computer management system for regulating, managing, and auditing the operation, financial data, and program information, as required by the department. It is not a coin-operated amusement machine as defined in s. 212.02(24), F.S., and does not include an amusement game or machine as described in s. 849.161, F.S.

- ◇ “Video lottery terminal vendor” means any person licensed by the department who engages in the business of selling, leasing, servicing, repairing, or upgrading video lottery terminals for video lottery retailers or who provides to the department or to a video lottery retailer, computer equipment, software or other functions related to video terminals.
- ◇ “Net terminal income” means currency and other consideration placed into a video lottery terminal, less payouts to or credits redeemed by players.
- ◇ “Video lottery retailer” means a pari-mutuel permit holder licensed under chapter 550, F.S., who holds a license to conduct a full schedule of live races or games, as described in s. 550.002(11), whose facility is located within 40 miles of an operating tribal casino that was in existence on or before January 1, 2007, or whose facility is located within a county with a population exceeding 800,000 according to the November 1, 2006 estimate of the Bureau of Economic and Business Research of the University of Florida.

Section 2 creates subsections (21)-(27) in s. 24.105, F.S., relating to VLTs, requiring the department to:

- ◇ Have in place the capacity to support video lottery games at facilities of video lottery retailers by January 1, 2008;
- ◇ Hear and decide promptly and in reasonable order all video lottery related license applications and enforcement proceedings for suspension or revocation of licenses;
- ◇ Collect and disburse video lottery revenue due the department;
- ◇ Certify net terminal income of video lottery retailers by inspecting records or conducting audits;
- ◇ Maintain a list of licensed video lottery terminal vendors and a current list of all contracts between video lottery terminal vendors and video lottery retailers;
- ◇ Approve an application for a video lottery retailer within 90 days after receipt of the application; and
- ◇ Contract with an independent testing laboratory to scientifically test and technically evaluate video lottery games, video lottery terminals, and video lottery operating systems for compliance with the chapter.

Section 3 creates s. 24.125, F.S., to authorize the department to adopt rules similar to rules adopted under ch. 551, F.S., for Slot Machines, regarding the regulation of video lottery retailers, video lottery terminal vendors, video lottery games, video lottery products, and specifications for video lottery terminals. The initial rules to permit operation of video lotteries and the licensing of video lottery vendors must be adopted by January 1, 2008. It authorizes the department to adopt emergency rules to implement this section.

Section 4 creates s. 24.126, F.S., providing that video lottery games may not be played by persons less than 21 years of age and requiring that signage be posted in the pari-mutuel facilities to ensure the age requirement is enforced.

Section 5 creates s. 24.127, F.S., to provide that a video lottery retailer may offer video lottery games at any time only at the pari-mutuel facility where the video lottery retailer is licensed to conduct pari-mutuel wagering or at its relocated licensed pari-mutuel facility if the relocation of the facility has been approved by the division under s. 550.0555, F.S. It requires that if a video lottery retailer fails to comply with the requirement to conduct a full schedule of races or games as defined in s. 550.002(11), F.S. for any reason, the department shall order the retailer to suspend its video lottery operation. This includes races or games under s. 550.475, F.S., and being authorized to receive broadcasts of horse races under s. 550.6308, F.S. The department may assess an administrative fine, not to exceed \$5,000 per

video lottery terminal per day, against any retailer who fails to suspend its video lottery operation when ordered by the department.

For video lottery terminals located on premises, each video lottery retailer shall determine the following:

- ◇ The number of video lottery terminals and where they are to be placed in the facility, not to exceed 1,000 at any pari-mutuel facility; however, any pari-mutuel facility that also holds a slot machine license is limited to a combination of video lottery terminals and slot machines equal to the maximum number of slot machines authorized for such facility.
- ◇ The dates and hours for play not to exceed 16 hours a day except that the hours of operation may be extended by majority vote of the governing body of the municipality where the retailer is located or the governing body of the county if the retailer is not located in a municipality;
- ◇ The mix of games that will be played;
- ◇ Use of currency, coins, tokens, vouchers, electronic credits, or anything of value;
- ◇ Location and movement of video lottery terminals on the premises;
- ◇ The staffing of video lottery terminal operations on the premises; and
- ◇ The minimum and maximum betting amounts and the payout.

Payouts must be within a suitable range with a minimum of 85 percent of the value placed in the video lottery terminal.

Each retailer is required to notify the department before commencing operation of video lottery games. The department is given overall control of the system to facilitate auditing and security programs. Each terminal is required to be linked directly or indirectly to a computer system operated by the department or by the department's contracted vendor. It is unclear how a computer would be linked indirectly.

The video lottery games may be played year-round. The income is not subject to s. 24.121, F.S., which provides for the allocation of revenues from the sale of on-line and instant lottery tickets.

A licensee must pay a nonrefundable license fee of \$3 million to be deposited into the Operating Trust Fund and used by the department to administer the provisions of the bill.

The distribution of the net terminal income derived from video lottery operations is as follows:

- ◇ Fifty percent shall be remitted to the Operating Trust Fund for transfer to the Education Enhancement Trust Fund;
- ◇ 0.50 percent shall be paid by the video lottery retailer to the department to administer and regulate the operation of video lottery terminals. Funds in excess of the department's administrative costs shall be transferred to the Educational Enhancement Trust Fund;
- ◇ 0.925 percent to the county where the facility is located; and,
- ◇ 0.925 percent to the municipality, if the facility is located in a municipality.

Notwithstanding any local agreements to the contrary, pari-mutuel facilities authorized to have slot machines pursuant to s. 23, Art. X of the State Constitution shall be required to pay no more than the percentages specified in paragraphs (c) and (d) of this subsection. If necessary to comply with any covenant established pursuant to s. 1013.68(4), s. 1013.70(1), or s. 1013.737(3), funds transferred to the Educational Enhancement Trust Fund under paragraph (b) shall first be available to pay debt service on lottery bonds issued to fund school construction in the event lottery revenues are insufficient for such purpose or to satisfy debt service reserve requirements established in connection with lottery bonds. Such funds are subject to annual appropriation by the Legislature.

These allocations must be made weekly. Amounts allocated to the Education Enhancement Trust Fund and the Administration Trust Fund must be remitted by electronic transfer within twenty-four hours after the allocation is determined.

Any person who intentionally manipulates the outcome, payoff or operation of a video lottery terminal commits a felony of the third degree.

The lottery retailer is responsible for payment of the video lottery prizes. Video monitors must be available in the video lottery terminal area to display live races or games or simulcast races or games, if the races or games are being conducted or broadcast at the facility. The area must also provide for wagering on the pari-mutuel events.

Section 6 creates s. 24.128, F.S., providing that vendors shall be licensed by the department by October 1, 2007, and emergency rule making authority is given to expedite the process. A vendor may not have any other interest or business relationships with a retailer.

Section 7 creates s. 24.129, F.S., providing that having video lottery terminals in pari-mutuel facilities will not change the character of the pari-mutuel facility for local zoning purposes.

Section 8 creates s. 24.130, F.S., providing standards for video lottery terminals. The standards include that the terminals must be approved by the department. Each approved terminal must:

- ◇ Be protected against manipulation;
- ◇ Have one or more tamperproof mechanisms that accept currency, coins, tokens, or vouchers in exchange for game credits.
- ◇ Be capable of suspending play as a result of tampering; and
- ◇ Be capable of being linked to a central computer to audit the operation and to obtain financial and program information as required by the department.

Section 9 creates s. 24.131, F.S., providing that every licensed video lottery terminal vendor shall submit a training program for the service and maintenance of terminals and equipment for approval by the department. The bill also provides that every video lottery terminal service employee must complete requirements of the manufacturer's training program before performing service, maintenance, or repairs on video lottery terminals or associated equipment.

Section 10 creates s. 24.132, F.S., providing for video lottery retailer agreements that are binding written agreements between the retailer and the association representing a majority of the thoroughbred racehorse owners and trainers at that location. The video lottery retailer may not conduct video lottery games unless it has a binding written agreement on file with the department between it and the Florida Thoroughbred Breeders' Association, Inc., governing the payment of breeders' s, stallion, and special racing awards on live thoroughbred races conducted at the retailer's pari-mutuel facility.

Section 11 creates s. 24.133, F.S., requiring the owner of each facility at which video lottery games are conducted to post signs providing a telephone number that a person with a gambling problem can call.

Section 12 creates s. 24.134, F.S., creating the Compulsive Gambling Program. Specifically, the bill provides that the Alcohol, Drug Abuse, and Mental Health Program Office within the Department of Children and Family Services shall establish a program for public education, awareness, and training regarding problem and compulsive gambling and the treatment and prevention of problem and compulsive gambling.

Section 13 creates s. 24.136, F.S., to provide that a video lottery retailer is entitled to a caterer's license pursuant to the provisions of s. 565.02, F.S., on days in which the pari-mutuel facility is open to the public for the purpose of video lottery play.

Section 14 creates s. 24.137, F.S., providing prohibitions on complimentary or reduced-cost alcoholic beverages and automated teller machines or similar devices in the designated video terminal gaming area. It also prohibits the video lottery retailer from accepting or cashing any personal, third-party, corporate, business, or government-issued check from any person.

Only tickets or paper currency or an electronic payment system for wagering are permitted at the video lottery terminal. They can be exchanged for cash, merchandise, or other items of value. An electronic credit system may be used for receiving wages and making payouts.

Section 15 creates s. 24.138, F.S., providing the department authority to exclude persons who have been ejected from a facility of a video lottery retailer or slot machine licensee in this or any other state by the government entity that regulates gaming.

Section 16 creates s. 24.139, F.S. providing for office space for the department at the video lottery terminal facility.

Section 17 amends s. 212.02, F.S., excluding from the definition of "coin-operated amusement machine" a video lottery terminal operated pursuant to ch. 24, F.S. Section 12.

Section 18 amends s. 1011.62, F.S., providing the estimated video lottery terminal net income, which is remitted to the Operating Trust Fund for transfer to the Educational Enhancement Trust Fund pursuant to s. 24.127(7), F.S., for the fiscal year, shall be subtracted from the aggregate required local effort for education funding.

Section 19 amends s. 550.09515, F.S., providing for the reinstatement of a thoroughbred permit that has been revoked or escheated to the State, providing that the revocation or escheat was not due to moral turpitude.

Section 20 provides an appropriation of \$10 million in recurring funds, for the 2007-2008 fiscal year, from the Operating Trust Fund in the Department of Lottery to implement the provisions of this act. In addition, 24 full-time equivalent positions and associated salary rate of 1,276,000 is authorized.

Section 21 provides that this act shall take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1 amends s. 24.103, F.S., providing video lottery definitions.

Section 2 amends subsection (10) and creates subsections (21)-(26) in s. 24.105, F.S., to provide the DOL with authority to hold patents and directs the DOL to notify the Department of State when securing a patent, and requires the department to regulate video lottery.

Section 3 creates s. 24.125, F.S., to authorize the department to adopt rules similar to rules adopted under ch. 551, F.S., for the regulation of video lottery.

Section 4 creates s. 24.126, F.S., providing video lottery age requirements and requiring signage to ensure the age requirement is enforced.

Section 5 creates s. 24.127, F.S., to provide for the regulation of video lottery terminals.

Section 6 creates s. 24.128, F.S., providing that vendors shall be licensed by the department by October 1, 2007, and providing emergency rule making authority to expedite the process.

Section 7 creates s. 24.129, F.S., providing that video lottery terminals in pari-mutuel facilities will not affect a pari-mutuel facility's local zoning.

Section 8 creates s. 24.130, F.S., providing standards for video lottery terminals.

Section 9 creates s. 24.131, F.S., providing requirements for video lottery terminal service, maintenance and repair.

Section 10 creates s. 24.132, F.S., providing for video lottery retailer agreements that are binding written agreements between the retailer and the association representing a majority of the thoroughbred racehorse owners and trainers at that location.

Section 11 creates s. 24.133, F.S., requiring signs with a telephone number for gambling counseling.

Section 12 creates s. 24.134, F.S., creating the Compulsive Gambling Program.

Section 13 creates s. 24.136, F.S., entitling a video lottery retailer to a caterer's license when open to the public for the purpose of video lottery play.

Section 14 creates s. 24.137, F.S., providing prohibitions on alcoholic beverages, automated teller machines or similar devices, and certain payment systems for wagering.

Section 15 creates s. 24.138, F.S., providing the department authority to exclude certain persons.

Section 16 creates s. 24.139, F.S. providing office space for the department.

Section 17 amends s. 212.02, F.S., limiting the definition of a "coin-operated amusement machine".

Section 18 amends s. 1011.62, F.S., providing that the estimated video lottery terminal net income shall be subtracted from the aggregate required local effort for education funding.

Section 19 amends s. 550.09515, F.S., providing for the reinstatement of certain thoroughbred permits.

Section 20 provides an appropriation of \$10 million and 24 FTEs to implement the provisions of this act.

Section 21 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: See "Fiscal Comments".
2. Expenditures: The bill provides for an appropriation of \$10 million and 24 FTEs to implement the provisions of this act. In addition, see "Fiscal Comments".

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill amends s. 1011.62, F.S., providing the estimated video lottery terminal net income, which is remitted to the Operating Trust Fund for transfer to the Educational Enhancement Trust Fund pursuant to s. 24.127(7), F.S., for the fiscal year, shall be subtracted from the aggregate required local effort for education funding. In addition, see "Fiscal Comments".
2. Expenditures: See "Fiscal Comments".

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Lottery also states that the pari-mutuel industry could incur costs to comply with the requirements of the bill.

D. FISCAL COMMENTS:

The preliminary unofficial estimate provided by Office of Economic & Demographic Research (EDR) indicates that the fiscal impact from video lottery tax receipts will be approximately \$208 million to the Educational Enhancement Trust Fund on a recurring basis, once the provisions of the bill are fully implemented. However, there will also be a negative impact to the Educational Enhancement Trust Fund and sales tax receipts due to fewer people purchasing lottery tickets and other taxable items. The

bill also provides additional allocations from the net terminal income derived from the video lottery games as follows:

- ◇ .5 percent will be paid by the video lottery retailer to the Department of Lottery to administer and regulate the operation of video lottery terminals. The funds that are in excess of the department's administrative costs will be transferred to the Educational Enhancement Trust Fund.
- ◇ .925 percent of the net terminal income will go to the county where the facility is located and .925 percent to a municipality, if the facility is located within its boundaries.

The Revenue Estimating Conference is scheduled to meet on this issue in the near future.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The DOL is created in s. 20.317, F.S., and meets the definition of "agency" in s. 119.011(2), F.S., for public records requirements. Section 24, Art. I of the State Constitution provides a substantive right for any person to inspect or copy a public record. "Public record" is defined to mean

. . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Legislature has not provided general patent or copyright authority for work products of agencies. The DOL's current authority to obtain copyrights and trademarks existed prior to the enactment of the Sunshine Amendment, s. 24, Art. I of the State Constitution, and is therefore grandfathered into law. The same is true for the DOL's authority to keep private certain trade secrets under s. 24.105, F.S.

Trademarks, copyrights, and patents all provide some restriction on the copying and dissemination of protected material, which when done by a state agency may run afoul of state public records laws and s. 24, Art. I of the State Constitution, unless an exemption is provided.

Since the adoption of s. 24, Art. I of the State Constitution, the legislature must follow strict procedures when creating a public records exemption. These requirements may be necessary for patenting a lottery game or lottery system because the patent would restrict the access and use of certain material. For example, although in 2001 the legislature provided agencies with the authority to copyright data processing software, which is included in the definition of a public record.³⁴ The law enacting this authority contained a statement of public necessity, necessary for a public records exemption, in support of the authority delegated.³⁵ The Second District Court of Appeal noted that

³⁴ Section 119.084, F.S.

³⁵ Ch. 2001-251, L.O.F.

. . . Florida's Constitution and its statutes do not permit public records to be copyrighted unless the legislature specifically states they can be.³⁶

Further, the court stated

To be sure, the legislature may exempt specific public records from the public records law *[citations omitted]*. The Sunshine Amendment permits the legislature, by two-thirds vote, to enact exemptions for public records, but only after specifically defining a public necessity and narrowly tailoring the exemption to that necessity *[citations omitted]*. Accordingly, the legislature has allowed restrictions on the unlimited access to some public records by enacting specific statutes authorizing certain agencies to obtain copyrights in particular circumstances *[citations omitted]*. . . . *A law permitting copyright protection of public records creates a public records exemption as contemplated in the Sunshine Amendment [emphasis added]*³⁷

In summary, although the Second District Court of Appeal addressed copyrights held by agencies, the courts do not appear to have addressed whether a patent held by an agency would require both specific authority to hold a patent and a public records exception. Currently, the DOL has public records exemptions for copyrights and trade secrets, but does not have a public records exemption specifically for patents.

B. RULE-MAKING AUTHORITY:

The bill provides the DOL with specific authority to adopt rules for:

- ◇ Scientifically testing and technically evaluating video lottery terminals for compliance with this chapter.
- ◇ The regulation of video lottery retailers, video lottery terminal vendors, video lottery games, and video lottery products.
- ◇ Specifications for approving and authorizing video lottery terminals in order to maintain the integrity of video lottery games and terminals. The specifications may not limit the number of video lottery terminal vendors who supply terminals to fewer than four.
- ◇ Hearing and approving or disapproving video lottery-related license applications and enforcement procedures related to suspension and revocation of licenses.
- ◇ The collection and disbursement of video lottery revenue.
- ◇ The certification of net terminal income of video lottery retailers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 30, 2007, the Environment and Natural Resources Council adopted a council substitute to the PCS for HB 1551. The PCS for HB 1551 was amended once, creating a council substitute substantially different than the noticed PCS for HB 1551.

The noticed PCS for HB 1551 only addressed the DOL's authority to hold patents. The PCS granted the DOL the authority to obtain patents and required the DOL to notify the DOS in writing whenever it secured a patent.

As amended, the CS/HB 1551 now addresses the regulation of VLTs in addition to providing the DOL with patent authority.

³⁶ See, *Microdecisions, Inc.*, *supra*, at 876.

³⁷ *Ibid* at 875.