

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 715 Compensation of Lottery Ticket Retailers

**SPONSOR(S):** Mooney

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 1 N	Thompson	Anstead
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

**SUMMARY ANALYSIS**

Gambling is generally prohibited and illegal in Florida. However, in 1986, Florida voters adopted a constitutional amendment authorizing the creation of the Florida Lottery (Lottery). Since that time, the Lottery has grown into one of the largest state-run lotteries in the country, with annual sales exceeding \$9 billion. Lottery tickets can be purchased at over 13,000 retail locations throughout the state.

The Lottery is charged with supervising and operating the lottery in accordance with the provisions of the Florida Public Education Lottery Act. Gross revenues from the sale of lottery products are distributed to prizes, Lottery expenses, and transfers to the Educational Enhancement Trust Fund (EETF).

The Lottery contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets, and is authorized to adopt rules to establish the manner and amount of compensation of retailers. However, during the 2022 Legislative Session, the Legislature authorized for the 2022-2023 fiscal year only, effective July 1, 2022, the commission for Florida Lottery ticket sales to be 5.75 percent of the purchase price of each ticket sold or issued as a prize by a retailer. Any additional retailer compensation is limited to the Florida Lottery Retailer Bonus Commission program appropriated in the 2022-2023 General Appropriations Act.

The bill:

- Establishes a permanent commission to retailers for lottery ticket sales.
- Increases the commission from 5.75 percent to 6 percent of the purchase price of each ticket sold or issued as a prize by a retailer.
- Removes the requirement that additional retailer compensation be limited to the Florida Lottery Retailer Bonus Commission program.

The bill increases the commission paid to Florida lottery retailers by approximately \$37 million annually. The Revenue Estimating Conference determined the bill will have a negative recurring impact to the EETF of \$37.1 million in Fiscal Year 2023-2024.

The effective date of the bill is July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### General Overview of Lottery in Florida

In general, gambling is illegal in Florida.<sup>1</sup> Chapter 849, F.S., prohibits keeping a gambling house,<sup>2</sup> running a lottery,<sup>3</sup> or the manufacture, sale, lease, play, or possession of slot machines.<sup>4</sup> Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,<sup>5</sup> bingo,<sup>6</sup> cardrooms,<sup>7</sup> charitable drawings,<sup>8</sup> game promotions (sweepstakes),<sup>9</sup> and bowling tournaments.<sup>10</sup> In addition, Chapters 550 and 551, F.S., respectively, authorize pari-mutuel wagering at licensed facilities and slot machine gaming at specified locations.

Section 7 of Article X of the Florida Constitution provides, "Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state."<sup>11</sup>

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. Section 15 of Article X of the Florida Constitution provides as follows:

Lotteries may be operated by the state.... On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.

In 1987, the Legislature created the Florida Public Education Lottery Act,<sup>12</sup> which established a state lottery system intended primarily to generate revenue for public education of the state.<sup>13</sup> The Department of the Lottery (Lottery) is charged with supervising and operating the lottery in accordance with the provisions of the Florida Public Education Lottery Act and rules adopted pursuant thereto.<sup>14</sup>

In 1988, the Lottery began offering lottery games with a \$1 weekly drawing.<sup>15</sup> Since then, the Lottery has grown to include approximately 80 different scratch-off games available at over 13,000 retailer locations, with lottery ticket prices ranging from \$1 to \$50.<sup>16</sup>

#### Lottery Revenues

In sum, for Fiscal Year 2021-22, the Florida Lottery:

- Prizes totaled \$6.245 billion;
- Retailer commissions totaled \$523.1 million;

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<sup>1</sup> S. 849.08, F.S.

<sup>2</sup> S. 849.01, F.S.

<sup>3</sup> S. 849.09, F.S.

<sup>4</sup> S. 849.16, F.S.

<sup>5</sup> S. 849.085, F.S.

<sup>6</sup> S. 849.0931, F.S.

<sup>7</sup> S. 849.086, F.S.

<sup>8</sup> S. 849.0935, F.S.

<sup>9</sup> S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

<sup>10</sup> S. 546.10, F.S.

<sup>11</sup> The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution (Nov. 5, 1968) include horseracing, greyhound racing and jai alai games.

<sup>12</sup> Ss. 24.101 to 24.124, F.S.

<sup>13</sup> S. 24.102, F.S.

<sup>14</sup> S. 24.105(2), F.S.

<sup>15</sup> Florida Lottery, *History*, <http://www.flalottery.com/history> (last visited Feb. 24, 2023).

<sup>16</sup> Florida Lottery, *Scratch Offs*, <http://www.flalottery.com/scratch-offs?amount=30> (last visited Feb. 24, 2023).

- Ticket sales totaled \$9.325 billion;
- Transfers to the EETF totaled \$2.33 billion; and
- Ranked the highest among U.S. lotteries in total sales and sixth highest among U.S. lotteries in per capita sales.<sup>17</sup>

Gross revenues from the sale of lottery products are distributed to prizes, Lottery expenses, and transfer to the Educational Enhancement Trust Fund (EETF).<sup>18</sup> The Lottery determines the variable percentage of the gross revenue from the sale of draw and scratch-off tickets that is returned to the public in the form of prizes in a manner designed to maximize the amount of revenue earned to enhance education. Gross sales revenue also is used to pay the expenses associated with running the Lottery, including the cost of its retailer network, draw and scratch-off game vendors, advertising vendors, and its in-house operation. The remainder of gross sales revenue is transferred to the EETF.<sup>19</sup>

## Lottery Retailers

The Lottery contracts with retailers<sup>20</sup> (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.<sup>21</sup> Lottery retailers receive support from the Lottery in the following ways, at no cost to the retailer:<sup>22</sup>

- In-store full service from a Lottery Sales Representative.
- Point-of-sale material.
- Ongoing training.
- In-store promotional opportunities.
- A dedicated Retailer Hotline for quick assistance.

The Lottery is authorized to adopt rules to establish the manner and amount of compensation of retailers.<sup>23</sup> A five percent sales commission was established in 1987<sup>24</sup> and remained until July 1, 2022. In addition, retailers also received a separate one percent commission for paying prizes of less than \$600.<sup>25</sup>

For the 2022-2023 fiscal year only, effective July 1, 2022, the Florida Legislature adopted a specific commission for Florida Lottery ticket sales of 5.75 percent of the purchase price of each ticket sold or issued as a prize by a retailer. Any additional retailer compensation is limited to the Florida Lottery Retailer Bonus Commission program appropriated in Specific Appropriation 2759U of the 2022-2023 General Appropriations Act.<sup>26</sup>

According to the Lottery, the 5.75 percent is a flat sales commission on both draw and scratch-off ticket sales. Lottery retailers sell scratch-off tickets on consignment. Retailers receive full books of scratch-off tickets at no cost, and after selling the tickets, receive a commission for selling those tickets to players. After tickets are sold, the retailer reconciles the book of tickets through the Lottery terminal, which then charges their account, less a 5.75 percent commission. Draw game ticket sales are automatically registered on the Lottery terminal and retailers are charged according to what they sell, less a 5.75 percent commission. There is no cap on the amount of sales commissions a retailer can receive, the more a retailer sells, the more they receive in commissions.<sup>27</sup>

<sup>17</sup> Office of Program Policy Analysis and Gov't Accountability, *Review of the Florida Lottery, 2022*, Report No. 23-02, (Jan. 2023), <https://oppaga.fl.gov/Documents/Reports/23-02.pdf> at page 1, (last visited Feb. 24, 2023).

<sup>18</sup> S. 24.121(1), F.S.

<sup>19</sup> Office of Program Policy Analysis and Gov't Accountability, *Government Program Summaries, Department of the Lottery, 2022*, <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=2090> (last visited Feb. 27, 2023).

<sup>20</sup> S. 24.103(5), F.S., defines "retailer" as "a person who sells lottery tickets on behalf of the department pursuant to a contract."

<sup>21</sup> S. 24.105(16), F.S.

<sup>22</sup> Florida Department of the Lottery, *Agency Analysis of House Bill 715*, p. 2 (Mar. 3, 2023).

<sup>23</sup> S. 24.105(9)(i), F.S.

<sup>24</sup> R. 53ER87-44, F.A.C.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Florida Department of the Lottery, *Agency Analysis of House Bill 715*, p. 2 (Mar. 3, 2023).

According to reports, the top 10 lottery-selling locations for the 2019 fiscal year, including total net sales, included the following:<sup>28</sup>

- State Line Gift Shop, McDavid: \$5,505,257.50
- Fortune Liquors, Campbellton: \$5,384,016.50
- Friendly Mini Mart, Bonifay: \$4,577,112
- Mercado Miami, Miami: \$4,289,590
- Flora Bama Liquor, Pensacola: \$3,558,104.50
- Publix, Clearwater: \$3,503,670
- Edgewood Shell, Jacksonville: \$3,484,808
- Circle K, Pensacola: \$3,445,720.50
- Publix, West Palm Beach: \$3,403,995.50
- Publix, Loxahatchee: \$3,367,386.50

### **Proposed Changes**

The bill establishes a permanent commission for Lottery ticket sales for retailers.

The bill increases the commission for lottery ticket sales from 5.75 percent to 6 percent of the purchase price of each ticket sold or issued as a prize by a retailer.

The bill removes the requirement that additional retailer compensation be limited to the Florida Lottery Retailer Bonus Commission program.

#### **B. SECTION DIRECTORY:**

Section 1: Amends s. 24.105, F.S., relating to powers and duties of the department.

Section 2: Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

According to the Lottery, increasing the retailer commission rate from 5.75 percent to 6 percent will reduce EETF transfers by \$23.6 million for FY 2023-24.<sup>29</sup>

The Revenue Estimating Conference (REC) determined the bill will have a negative recurring impact to the EETF of \$37.1 million in Fiscal Year 2023-2024. According to the REC, an increase in the retailer commission rate reduces the Lottery transfer to EETF from lottery ticket sales.<sup>30</sup>

##### **2. Expenditures:**

Expenditures related to the retailer commission rate will increase.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

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<sup>28</sup> Dan Sweeney, *Where do the most Florida Lottery tickets get sold? Bet you can't guess.*, (Mar. 13, 2020), <https://www.sun-sentinel.com/news/sound-off-south-florida/fl-ne-sosf-florida-lottery-retail-sales-20200313-v-m4qu7ovvne4vgunovkh4cyji-story.html> (last visited Mar. 26, 2023).

<sup>29</sup> Florida Department of the Lottery, Agency Analysis of House Bill 715, p. 8 (Mar. 3, 2023).

<sup>30</sup> Revenue Estimating Conference, Proposed Fiscal Impact of the Educational Enhancement Trust Fund, Consensus Estimate (Mar. 17, 2023), <http://edr.state.fl.us/content/conferences/revenueimpact/archives/2023/pdf/impact0317.pdf> (last visited Mar. 23, 2023).

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Lottery, the increase in commission to retailers collectively will average \$24.02 million over the next five years. However, the amount received on an individual basis is indeterminate.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

According to the Lottery, it would need to amend a current rule to account for the increased sales commissions. The Florida Public Education Lottery Act provides sufficient rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is not clear whether the commission rate established by the bill will allow the Lottery to continue to determine the amount of the commission for retailers or preclude the ability of the Lottery to make changes to the commission rate.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES