

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 991 Lottery Games

SPONSOR(S): Government Operations & Technology Appropriations Subcommittee, Robinson

TIED BILLS: **IDEN./SIM. BILLS:** SB 1318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Gaming Control Subcommittee	14 Y, 1 N	Salter	Barry
2) Government Operations & Technology Appropriations Subcommittee	8 Y, 3 N, As CS	Helpling	Topp
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 Department of the Lottery (Lottery). Since that time, the Florida Lottery has grown into one of the largest state-run lotteries in the country, with annual sales exceeding \$7.1 billion in fiscal year 2018-2019. Lottery tickets can be purchased at over 13,000 retail locations throughout Florida.

Current law does not require the Lottery to inform customers who purchase lottery tickets of the risks associated with gambling, including the potential for compulsive or addictive behavior. However, the Lottery encourages customers to “Play Responsibly” and widely advertises a toll-free phone number for a referral service to assist people with gambling problems.

The bill amends current law by directing the Lottery to contractually require vendors to place the following message prominently on all lottery tickets: “PLAY RESPONSIBLY.” The bill requires the Lottery to provide the same message in all advertisements or promotions of lottery games, including those on television, the Internet, print, and the radio.

The bill expressly prohibits the player’s use of electronic devices in playing lottery games. The bill prohibits the Lottery from conducting a lottery game in which the winner is chosen on the basis of the activities or outcomes of one or more sporting events.

For fiscal analysis of the bill’s requirement to include “PLAY RESPONSIBLY” on 5 percent on the front of specified lottery tickets and advertisements, see *Fiscal Analysis and Economic Impact Statement*.

The bill provides for an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

General Overview of Lottery in Florida

In general, gambling is illegal in Florida.¹ Chapter 849, F.S., prohibits keeping a gambling house,² running a lottery,³ or the manufacture, sale, lease, play, or possession of slot machines.⁴ Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,⁵ bingo,⁶ cardrooms,⁷ charitable drawings,⁸ game promotions (sweepstakes),⁹ and bowling tournaments.¹⁰ In addition, Chapters 550 and 551, F.S., respectively, authorize pari-mutuel wagering on certain live events 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."¹¹

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.

Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery pursuant to the constitutional authorization set forth above. Section 24.102, F.S., creates the Department of the Lottery (Lottery) and states the Legislature's intent that it be self-supporting, revenue-producing, and function as an entrepreneurial business enterprise. Florida began offering lottery games in 1988, with a \$1 weekly drawing.¹² Since then, the Lottery has grown to include approximately 60 different scratch-off games available at over 13,000 retailer locations, with lottery ticket prices ranging from \$1 to \$30.¹³ This growth resulted in more than \$7.1 billion in total sales for the 2018-2019 fiscal year.¹⁴

¹ S. 849.08, F.S.

² S. 849.01, F.S.

³ S. 849.09, F.S.

⁴ S. 849.16, F.S.

⁵ S. 849.085, F.S.

⁶ S. 849.0931, F.S.

⁷ S. 849.086, F.S.

⁸ S. 849.0935, F.S.

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

¹⁰ S. 546.10, F.S.

¹¹ 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.

¹² Fla. Lottery, *History*, <http://www.flalottery.com/history> (last visited Jan. 22, 2020).

¹³ *Id.*; Fla. Lottery, *Scratch Offs*, <http://www.flalottery.com/scratch-offs?amount=30> (last visited Jan. 22, 2020).

¹⁴ Office of Program Policy Analysis and Government Accountability, *Review of the Florida Lottery, 2019 DRAFT* (Jan. 2020).

Lottery Warning and Problem Gambling

Currently, there is no statutory provision requiring the Lottery to inform customers who purchase lottery tickets of the risks associated with gambling, including the potential for compulsive or addictive gambling. However, the Lottery's website includes a "Play Responsibly" page, which states:

Florida Lottery games are designed to be a fun, low-cost form of entertainment with the added benefit of helping to support education. While most of our players enjoy the fun and entertainment of playing our games, for some, gambling of any kind can be a problem.

To assist individuals and families struggling with addiction, the Florida Lottery encourages them to contact the Florida Council on Compulsive Gambling... Their multilingual Helpline number is:

888-ADMIT IT (888-236-4848)¹⁵

The Play Responsibly page also lists phone numbers and a link where one may call, text, or chat with someone at the National Problem Gambling Helpline as well as a link to Gamblers Anonymous.¹⁶ Phone numbers for the Florida Council on Compulsive Gambling, National Problem Gambling Helpline and Gamblers Anonymous can also be found in "Play Responsibly" pamphlets, located next to tickets in most retailers.¹⁷

In addition, the following statement is found on the back of certain lottery products: "Play Responsibly – If you or someone you know has a gambling problem, call 1-888-ADMIT-IT."¹⁸

Addiction is characterized by the "inability to consistently abstain, impairment in behavioral control, craving, diminished recognition of significant problems with one's behaviors and interpersonal relationships, and a dysfunctional emotional response."¹⁹ Opponents of gambling contend that participants in gambling are particularly susceptible to addiction, specifically in an attempt to overcome the anxiety brought on by the gambling lifestyle.²⁰ Gambling studies indicate that games of chance present the illusion of quick and effortless financial gain yet can often lead to financial loss due to the statistical improbability of winning a prize.²¹ Researchers describe a cycle in which the gambler believes she can win back her losses, with the cycle continuing until she is forced to seek rehabilitation to break her habit.²²

Personal Electronic Devices

The percentage of Americans who own a cellphone has increased significantly, from 62% in 2002 to 96% in 2019.²³ Smartphone ownership has also increased dramatically from 35% in 2011 to 81% in 2019.²⁴ Tablet computers were introduced in 2010 and as of June 2019, roughly half of U.S. adults own

¹⁵ Fla. Lottery, *Where to Play*, <http://www.flalottery.com/whereToPlay> (last visited Jan. 22, 2020).

¹⁶ Fla. Lottery, *Play Responsibly*, <http://www.flalottery.com/playResponsibly> (last visited Jan. 22, 2020).

¹⁷ Document on file with the Gaming Control Subcommittee.

¹⁸ Document on file with the Gaming Control Subcommittee.

¹⁹ Am. Soc'y of Addiction Med., *Quality and Practice*, <http://www.asam.org/quality-practice/definition-of-addiction> (last visited Jan. 22, 2020).

²⁰ See Psychguides.com, *Compulsive Gambling Symptoms, Causes and Effects*, <http://www.psychguides.com/guides/compulsive-gambling-symptoms-causes-and-effects/> (last visited Jan. 22, 2020).

²¹ *Id.*

²² See Natasha Dow Schüll, *Addiction by Design: Machine Gambling in Las Vegas*, 225 (2012).

²³ Pew Research Center, *Mobile Fact Sheet*, <http://www.pewinternet.org/fact-sheet/mobile/> (last visited Jan. 22, 2020).

²⁴ *Id.*

one.²⁵ American ownership of desktop and laptop computers has experienced slight fluctuation over the past 10 years, with ownership remaining around 75%.²⁶

Currently, there is no explicit statutory provision related to the use of such devices in relation to lottery tickets or games. However, given the wording of several statutes and their enactment prior to the advent and proliferation of smartphones, the Lottery's authorizing statutes appear to contemplate the authorization of lottery games in paper form only.²⁷

Recent Developments

Sports betting has become largely popular over the past three decades. In 1992, the federal Professional and Amateur Sports Protection Act (PASPA) was enacted into law. PASPA made it unlawful for a governmental entity or person to sponsor, operate, advertise, promote, license, or authorize a lottery, sweepstakes, or other betting, gambling, or wagering on professional or amateur sports. In May 2018, the U.S. Supreme Court held that the PASPA provision prohibiting state authorization of sports gambling violated the anti-commandeering rule and was therefore unconstitutional.²⁸ As of January 2020, 15 states have legalized sports betting.²⁹

In November 2018, Florida voters passed a constitutional amendment entitled Voter Control of Gambling in Florida, substantially reducing the Legislature's authority to authorize "casino gambling."³⁰ The Florida Lottery,³¹ certain tribal gaming,³² and specified pari-mutuel wagering activities³³ are exempt from the amendment.

Educational Enhancement Trust Fund

The Lottery is required to transfer variable percentages of gross revenue from the sale of lottery games from the Lottery's Operating Trust Fund to the Educational Enhancement Trust Fund within the Department of Education.³⁴ The remaining funds left in the Lottery's Operating Trust Fund are used for the payment of administrative expenses of the Lottery, including costs incurred for contracts entered into for the purchase of goods or services required by the Lottery.³⁵ The December 11, 2019, Revenue Estimating Conference estimated \$1.8 billion for Fiscal Year 2019-20, \$1.9 billion for Fiscal Year 2020-21, and \$1.9 billion for Fiscal Year 2021-22 to be transferred to the Educational Enhancement Trust Fund.³⁶

Effect of Proposed Changes

²⁵ *Id.*

²⁶ *Id.*

²⁷ S. 24.112(13), F.S.; S. 24.105(6), F.S.; S. 24.108(2), F.S. (1987).

²⁸ In 2012, New Jersey enacted a constitutional amendment making it lawful for the legislature to authorize sports gambling. The National Collegiate Athletic Association brought suit, ultimately leading to a ruling by the U.S. Supreme Court invalidating PASPA. *Murphy v. NCAA*, 138 S.Ct. 1461, 1471 (2018).

²⁹ Dustin Gouker, *Legislative Tracker: Sports Betting*, Legal Sports Report (Jan. 11, 2020), <https://www.legalsportsreport.com/sportsbetting-bill-tracker/> (last visited Jan. 22, 2020).

³⁰ FLA. CONST. ART. X. §30.

³¹ For purposes of Article X, Section 30, the term "casino gambling" excludes any game authorized under Article X, Section 15 of the Florida Constitution (State operated lotteries). FLA. CONST. ART. X. §30.

³² Article X, Section 30(c) provides as follows: "Nothing herein shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to IGRA." FLA. CONST. ART. X. §30(c).

³³ For purposes of Article X, Section 30, the term "casino gambling" does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions. FLA. CONST. ART. X. §30.

³⁴ S. 24.121(2) F.S.

³⁵ S. 24.121(3) F.S.

³⁶ Office of Economic and Demographic Research, Revenue Estimating Conference Executive Summary for Lottery Ticket Sales and the EETF December 11, 2019, <http://edr.state.fl.us/Content/conferences/lottery/lotterysummary.pdf> (last visited Feb. 6, 2020).

The bill requires that beginning January 1, 2021, all advertisements and promotions of lottery games include the following message: "PLAY RESPONSIBLY." If the advertisement is shown on television, the internet, or another electronic medium, the message must appear in black font on a white background and occupy at least five percent of the surface area of the advertisement or promotion. If the advertisement is in print, including a newspaper, magazine, or billboard, the message must appear in prominent text and occupy at least five percent of the total surface area of the advertisement or promotion. If the advertisement is on the radio, the message must be audibly announced at the conclusion of the advertisement or promotion.

The bill requires that beginning January 1, 2021, all contracts for the printing of lottery tickets specify that tickets printed on or after January 1, 2022, must include the following message: "PLAY RESPONSIBLY." The message must appear in prominent text on the front of each ticket and occupy at least five percent of the total surface area of the ticket.

The bill prohibits the use of electronic devices to play lottery games.³⁷ The bill also clarifies that the Lottery may not conduct any lottery game in which the winner is chosen based upon the activities or outcomes of one or more sporting events.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 24.107, F.S., relating to advertising and promotions of lottery games.

Section 3: Amends s. 24.111, F.S., relating to vendors; disclosure and contract requirements.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The lottery projects that there will be an estimated loss of revenue totaling \$117.2 million.³⁸ This amount includes taking as many as 1,125 terminal and 208 vending machines out of service at one time to have the message "PLAY RESPONSIBLY" appear on the machines. The Lottery is authorized to have 1,000 Full-Service Vending Machines to sell terminal tickets and instant tickets and 1,500 Full Service Vending Machines with functionality to sell only instant tickets.³⁹ This loss of sales would represent a decrease in transfer to the Educational Enhancement Trust Fund of \$37.9 million.⁴⁰

However, the bill provides that advertisements in print include newspapers, magazines, and billboards that must include the "PLAY RESPONSIBLY" message. The bill does not identify terminal and vending machines as media that require the message. The Lottery fiscal analysis does not appear to be applicable to the bill as drafted. The Lottery analysis did not include loss of revenue or reductions to the Educational Enhancement Trust Fund related to the "PLAY RESPONSIBLY" message appearing on advertisements or tickets, as specified by the bill. If the Lottery is not required to modify terminal and vending machines, there is likely no loss of current revenue resulting from the implementation of the bill.

³⁷ This does not apply to Lottery vending machines under s. 24.112, F.S.

³⁸ Department of the Lottery, Department Analysis of 2020 HB 991, p. 4 (Jan. 30, 2020).

³⁹ Ch. 2019-115 Laws of Fla., Specific Appropriation 2771.

⁴⁰ Department of the Lottery, *supra* note 35 at 4.

2. Expenditures:

The Lottery estimates the total cost to implement the bill is approximately \$6.3 million, as follows:

- Terminal, vending machines, and other related products: \$4.4 million.
- Lighted jackpot signs throughout the state: \$1.36 million.
- Modifications to signs and promotional materials at vendor locations: \$266,000.
- Replacement of billboards: \$240,000.⁴¹

As stated above, the bill provides that advertisements in print include newspapers, magazines, and billboards. From the estimated expenditures provided by the Lottery, it may be that only billboards will be required to have the “PLAY RESPONSIBLE” message be included. The estimated cost for the billboard is for complete replacement. The Lottery did not provide an estimate for other alternatives, including modification to current billboards. Modifications to advertisements including billboard modifications or replacements can be accomplished with the Lottery’s base appropriations for advertising. The Lottery’s paid advertising and promotion appropriation is \$36.3 million for Fiscal Year 2019-20.⁴²

The bill requires all lottery tickets that are not part of an interstate lottery to include a “PLAY RESPONSIBLY” message beginning January 1, 2022. The Lottery did not provide an estimated cost for modifying tickets to include the message. Many tickets already include “Play Responsibly – If you or someone you know has a gambling problem, call 1-888-ADMIT-IT” on the back of tickets. The cost to include “PLAY RESPONSIBLY” on 5 percent on the front of specified lottery tickets, within the specified time frame, may be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the Lottery removes vending and ticket machines from retailer stores to be modified, the Lottery estimates a projected loss of approximately \$6.6 million in retailer commissions.⁴³ However the Lottery’s fiscal analysis does not appear to be applicable to the bill as drafted.

D. FISCAL COMMENTS:

The bill has not yet been reviewed by the Revenue Estimating Impact Conference.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

⁴¹ Department of the Lottery, Department Analysis of 2020 HB 991, p. 5 (Jan. 30, 2020).

⁴² Ch. 2019-115 Laws of Fla., Specific Appropriation 2773.

⁴³ Department of the Lottery, *supra* note 38 at 5.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Tuesday, February 11, 2020, the Government Operations & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the requirement that \$500,000 from the Lottery's Operating Trust Fund be allocated annually toward preventing compulsive and addictive gambling.

This analysis is drafted to the committee substitute as passed by the Government Operations & Technology Appropriations Subcommittee.