

REVENUE ESTIMATING CONFERENCE

TAX: Gaming Taxes

ISSUE: Pari-Mutuel Tax Refund

BILL NUMBER(S): SB 640 CS1 (Amendment)

SPONSOR(S): Senator Jones

MONTH/YEAR COLLECTION IMPACT BEGINS: FY 2010/2011

DATE OF ANALYSIS: 04/19/2010

SECTION 1: NARRATIVE

a. Current Law:

Cardroom Revenue:

- 10% tax rate on cardroom gross receipts for all cardroom licensees, which currently operate 23 facilities.
- ½ of the taxes remitted are deposited in General Revenue (GR) while ½ is deposited in Pari-Mutuel Wagering Trust Fund (PMWTF).
- ¼ of the cardroom revenue deposited into PMWTF is distributed to counties/municipalities where cardrooms were approved.
- \$1,000 annual table fee

b. Proposed Change:

Cardroom Revenue:

- 0% tax rate on cardroom gross receipts for non-slot facilities operating a cardroom, which are estimated to be 17 facilities in FY 2010-2011
- All remitted cardroom taxes are to be deposited into PMWTF

SECTION 2: DESCRIPTION OF DATA AND SOURCES

Pari-Mutuel Annual Reports 08/09

Section 550, 551 and 849 Florida Statutes

March 2010 Revenue Estimating Conference

February 2010 Revenue Impact Conference

SECTION 3: METHODOLOGY (INCLUDE ASSUMPTIONS AND ATTACH DETAILS)

SECTION 4: PROPOSED FISCAL IMPACT

State Impact: All Funds	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
Loss to GR Distribution (11 counties)	(\$8,400,000)	0	(\$7,600,000) (\$800,000)	(\$7,600,000) (\$800,000)	(\$7,600,000) (\$800,000)

There would potentially be a further loss to GR of approximately 70% of the adopted \$2.8 million for the increase in hours and no limit betting. Based on the \$2.8 million, the loss would be approximately \$2 million to GR.

There will also be a loss of \$700,000 in FY 11-12 and \$1.4 million thereafter from the cardroom revenue that would have been remitted to the state from a jai-alai permitholders who would convert their permit to a greyhound permit and open a satellite cardroom facility. Therefore, based on the figures adopted, the total potential recurring loss to GR would be approximately \$3.4 million.

State Impact: All Funds	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
Increased Hours and No-Limit Betting	(\$2,000,000)	0	(\$2,000,000)	(\$2,000,000)	(\$2,000,000)
New Cardroom due to Jai-Alai to Greyhound permit Conversion	0	0	(\$700,000)	(\$1,400,000)	(\$1,400,000)

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SECTION 5: CONSENSUS ESTIMATE (ADOPTED)

	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
General Revenue					
State Trust					
Total State Impact					
Total Local Impact					
Total Impact					

REVENUE ESTIMATING CONFERENCE

TAX: Lottery Revenues/Educational Enhancement Trust Fund

ISSUE: Impact of Changes to Rule Making Authority

BILL NUMBER(S): HB 1537

SPONSOR(S):

MONTH/YEAR COLLECTION IMPACT BEGINS:

DATE OF ANALYSIS: April 20, 2010

SECTION 1: NARRATIVE

a. Current Situation:

Section 24.102, Florida Statutes, outlines the intent of the Legislature in establishing the format for the department's operations. The intent of the Legislature was "that the lottery games be operated by a department of state government that functions as much as possible in the manner of an entrepreneurial business enterprise. The Legislature recognizes that the operation of a lottery is a unique activity for state government and that structures and procedures appropriate to the performance of other governmental functions are not necessarily appropriate to the operation of a state lottery." As part of that design, the Legislature provided certain rule making authority that has modeled the department's business operations for the past twenty two years.

The department currently has rule making authority to adopt rules for very specific areas as well as "other matters necessary or desirable for the efficient or economical operation of the lottery or for the convenience of the public." In addition, the Legislature provided for the department to "have the authority to perform any of the functions of the Department of Management Services under chapter 255, chapter 273, chapter 281, chapter 283, or chapter 287, or any rules adopted under any such chapter, and may grant approvals provided for under any such chapter or rules. If the department finds, by rule, that compliance with any such chapter would impair or impede the effective or efficient operation of the lottery, the department may adopt rules providing alternative procurement procedures. Such alternative procedures shall be designed to allow the department to evaluate competing proposals and select the proposal that provides the greatest long-term benefit to the state with respect to the quality of the products or services, dependability and integrity of the vendor, dependability of the vendor's products or services, security, competence, timeliness, and maximization of gross revenues and net proceeds over the life of the contract."

Benefits of Current Authority

The rule making authority provided for in chapter 24 has allowed the department to operate in the best interest of the state and the citizens of the state of Florida by:

- Enhanced revenue earnings due to expeditious game launches and enhancements,
- Enhanced revenues by maximizing opportunities for promotions,
- Enhanced revenues by developing and deploying retailer incentive programs in an expeditious manner that have maximized returns based on immediate market conditions.
- Streamlined procurement activities while maintaining an open and competitive process,
- Saved costs due to more efficient processes for rule development and amendments,
- Saved costs by maximizing alternative procurement sources,
- Enhanced player satisfaction by expeditious modifications to prize fulfillment due to changing market place conditions or federal regulations,
- Enhanced revenues by creating low cost employee incentive programs to grow sales

Mission Fulfillment: The mission of the Florida Lottery is to maximize revenues for the enhancement of public education in Florida. With this focus, the department has constantly strived to maximize every dollar by enhancing revenues through quickly deploying new games or modifying existing games so they continue to attract the maximum level of players. In addition, the department also focuses on streamlining all elements of operations, product and administrative areas, to ensure that all cost savings are realized in order to maximize the potential profit margin of the sales dollar.

Operational Efficiencies: A big part of the streamlining efforts that are a continuous part of every department's strategic plans consists of finding ways to do more with less. The ability to create rules to

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support streamlined business processes is the foundation upon which the department has been able to achieve such an entrepreneurial element in a state agency. The department has used current rule making authority to create the alternative personnel program it currently utilizes as well as the alternative competitive procurement methods implemented by the department. Under such procurement methods, the department has had the ability to perform for itself many of the same authorities that DMS performs for other agencies such as determining a single source provider.

Several years ago, following a lengthy and costly bid protest of an on-line gaming system procurement, OPPAGA recommended that the Lottery pursue statutory changes in the way Lottery bid protests are handled. This led to the current statute, enacted in 2006, which sets a higher standard for Division of Administrative Hearings reviews of Lottery procurement decisions. By setting this higher standard of review, the statute was designed to avoid or at least reduce the number of needless bid protests, thereby increasing efficiencies in the Lottery's competitive bidding process.

The department has exercised its emergency rule making authority to quickly respond to market conditions by quickly creating retailer incentive rules to help boost sales. The most recent example is rule 53ER09-23. The department decided to try and lift sales for one of its \$20 instant games by creating a 2.5% retailer bonus. The results of the three week program were an increase in sales for that one game of \$1.5 Million and \$326,000 in additional EETF transfers.

b. Proposed Change:

PCB for HB 1537, after seven amendments, proposes to modify the current rule making authority used by the department for promulgating rules related to retailers (including incentives and bonus programs), prize payments, personnel program and general procurements from the current emergency rule based process to a permanent rule making process. The permanent rule making process is more time intensive and will not allow the department to quickly implement sales incentive programs such that described above. In addition, the legislation proposes to remove the department's ability to promulgate rules related to alternative competitive procurement methods. The department will be required to follow the DMS rules for all procurements. With the exception of F.S. 287.042(1)(h) and 287.057(23), which relate to fees and utilization of the MFMP systems, all exemptions for lottery specific procurements will no longer exist. The loss of those exemptions will add multiple steps to all future procurements and add administrative costs, thereby lowering the profit margin.

SECTION 2: DESCRIPTION OF DATA AND SOURCES

The department has reviewed the expected procurement activities that have been previously conducted using the authorized alternative procurement methods to determine the workload impact and increased operating costs. The department has reviewed its rules to determine which rules previously filed as emergency rules will now be required to be promulgated using the permanent rule making process and has also analyzed the rules previously changed to determine the impact that having to file the changes as a permanent rule would have had due to the length of time required for permanent rule making. The department has also reviewed the rules for which there would no longer be rulemaking authority to determine the potential fiscal impact of lost business opportunities.

SECTION 3: METHODOLOGY (INCLUDE ASSUMPTIONS AND ATTACH DETAILS)

The methodology used in this analysis centered on estimating the impact of expected activities where known and risk identification for possible future impacts given past history.

The department has looked at its anticipated procurement activities and rule making requirements for the upcoming fiscal years to assess the potential workload increases expected given the additional notice

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requirements, filings, public meetings, tracking and monitoring, public records reviews, bid protest support and other procurement related activities required under the permanent rule making process that were previously minimized by the Lottery's alternative methods. In addition, the department has forecast the increased expenses due to loss of exemptions previously obtained. (Table 1).

The more unpredictable and potentially substantial costs are the lost business opportunities the department could experience due to the inability to meet deadlines with sponsors, corporate partners and/or changing market conditions. For a low estimate of the impact of the single source determination process change, the department has used a potential loss of 10% of sponsorships and other joint marketing opportunities and 50% for the high estimate. The department anticipates that having to use the DMS procurement process will increase the length of time required for planning sponsorship procurements such that some of the previous sponsorship procurements will no longer be possible. Since the department cannot forecast all possible scenarios that might present themselves, an analysis has been done using rules filed during the two most recent full calendar years. Using the frequency of rule filings that had financial implications, the department has estimated the potential impact on similar events that are likely to occur in the next two years. The department has estimated that the length of time the department will need to complete rule-making will increase in the best case scenario by 75 days. For the high estimate the department has increased that time by 1/3 for possible delays due to administrative processes, public comments or objections. A concern is that some private businesses with which the department does sponsorships and joint promotions will not accept the longer advance planning process and will not be able or willing to participate in sponsorships in the future. Another unpredictable but potentially substantial cost is the potential delay in contracting with major vendors. The department's current on-line gaming vendor contract is nearing its completion date. Without the current statutory bid protest protections, the department is likely to find it difficult to complete the procurement process and execute a new contract in a timely and cost effective fashion. (Table 2)

SECTION 4: PROPOSED FISCAL IMPACT (IN MILLIONS)

State Impact: All Funds	FY 2011-12 Cash	FY 2012-13 Cash
High	(10.8)	(10.8)
Low	(5.4)	(5.4)

SECTION 5: CONSENSUS ESTIMATE (ADOPTED)

	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
General Revenue			
State Trust			
Total State Impact			
Total Local Impact			
Total Impact			

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Table 1

Potential Impacts due to Known Elements	Annual Cost	Impact To EETF
Cost Savings Realized from alternative procurement sources	97,000.00	(97,000.00)
Additional Staff to support expanded process steps	317,000.00	<u>(317,000.00)</u>
		(414,000.00)

Table 2 (a) Low Estimate

Potential Annual Impacts due to Past Experiences (Lost Opportunities)	Basis for Low Impact	Low Impact to EETF
Loss of Sponsorship & Special Events Revenues (135 per year)	10% Reduction	(159,403.04)
Loss of Revenue due to delays of rule changes regarding Retailer Incentives & Bonuses	2 Corp. Accts	(226,776.00)
Loss of Revenue due to delay of rule change regarding tickets (which also had a change requirement in the Retailer Accountability rule to accomplish the desired impact)	75 Days	(206,000.00)
Loss of Savings from Bid protest procedure changes	90 Days	(4,643,940.00)
Total of Low Impact Items		(5,444,119.04)

Table 2 (b) High Estimate

Potential Annual Impacts due to Past Experiences (Lost Opportunities)	Basis for Low Impact	Low Impact to EETF
Loss of Sponsorship & Special Events Revenues (135 per year)	50% Reduction	(797,015.20)
Loss of Revenue due to delays of rule changes regarding Retailer Incentives & Bonuses	100% of Sales lift	(326,007.11)
Loss of Revenue due to delay of rule change regarding tickets (which also had a change requirement in the Retailer Accountability rule to accomplish the desired impact)	100 Days	(257,500.00)
Loss of Savings from Bid protest procedure changes	180 Days	(9,287,880.00)
Total of High Impact Items		(10,756,395.20)