

1989

Session Law 89-208

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the Legislation Commons

Recommended Citation

House of Representatives, Florida Senate &, "Session Law 89-208" (1989). *Staff Analysis*. 910.
<https://ir.law.fsu.edu/staff-analysis/910>

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

H 1317 GENERAL BILL/CS/CS/1ST ENG by Appropriations; Regulated Industries; Long; Lombard; Sanderson (Similar CS/S 1398, Compare CS/H 145, H 18-B, CS/S 77, CS/1ST ENG/S 1275, S 1-A, 1ST ENG/S 3-B)

State Lottery; revises provisions re information required to be disclosed by vendors in major procurements; prohibits contracts & enforcement of contracts with vendors who do not comply with disclosure requirements; provides penalty for filing of certain false claims for payment with dept.; revises provisions re deposit of moneys in Administrative Trust Fund; authorizes sale of lottery tickets along turnpike system, etc. Amends F.S. Effective Date: 07/01/89.

03/24/89 HOUSE Prefiled
 03/27/89 HOUSE Referred to Regulated Industries; Finance & Taxation; Appropriations
 03/28/89 HOUSE Subreferred to Subcommittee on the Lottery
 04/04/89 HOUSE Introduced, referred to Regulated Industries; Finance & Taxation; Appropriations -HJ 126; Subreferred to Subcommittee on the Lottery; On Committee agenda—Regulated Industries, 04/05/89, 1:15 pm, 212-HOB—For ratification to subcommittee
 04/10/89 HOUSE On subcommittee agenda—Regulated Industries, 04/12/89, 1:15 pm, 212-HOB
 04/12/89 HOUSE Subcommittee Recommendation: Favorable as a proposed CS
 04/13/89 HOUSE On Committee agenda—Regulated Industries, 04/17/89, 10:40 am, 214-C
 04/18/89 HOUSE Preliminary Committee Action by Regulated Industries: Favorable as a CS
 04/25/89 HOUSE Comm. Report: CS by Regulated Industries -HJ 275; CS read first time -HJ 274; Now in Finance & Taxation -HJ 275
 05/03/89 HOUSE On Committee agenda—Finance & Taxation, 05/05/89, 8:30 am, 413-C—For ratification to subcommittee
 05/15/89 HOUSE On Committee agenda—Finance & Taxation, 05/17/89, 3:30 pm, 413-C—to be withdrawn from subcommittee and considered
 05/16/89 HOUSE On Committee agenda—Appropriations, 05/18/89, 1:00 pm, 21-HOB—If received
 05/17/89 HOUSE Preliminary Committee Action by Finance & Taxation: Favorable with 2 amendments
 05/18/89 HOUSE Comm. Report: Favorable with 2 amendment(s) by Finance & Taxation -HJ 538; Now in Appropriations -HJ 538; Preliminary Committee Action by Appropriations: Favorable as a CS
 05/25/89 HOUSE Comm. Report: CS/CS by Appropriations, placed on Calendar -HJ 657; CS read first time -HJ 656
 05/30/89 HOUSE Placed on Special Order Calendar
 05/31/89 HOUSE Read second time -HJ 892; Amendments adopted; Read third time; CS passed as amended; YEAS 112 NAYS 0 -HJ 893
 05/31/89 SENATE In Messages
 06/01/89 SENATE Received, referred to Commerce; Governmental Operations; Finance, Taxation and Claims; Appropriations -SJ 689; Immediately withdrawn from Commerce; Governmental Operations; Finance, Taxation and Claims; Appropriations; Substituted for CS/SB 1398; CS passed; YEAS 37 NAYS 0 -SJ 700
 06/01/89 Ordered enrolled
 06/20/89 Signed by Officers and presented to Governor
 06/28/89 Approved by Governor; Chapter No. 89-208

B
I
L
L

H
I
S
T
O
R
Y

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

****AS PASSED BY THE 1989 LEGISLATURE****

Storage name: \wp\sa\h1317-f.ri
DATE: June 8, 1989

**HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATED INDUSTRIES
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 1317

RELATING TO: The Lottery

SPONSOR(S): Committee on Appropriations; Committee on Regulated Industries; and Reps. Long, Lombard and Sanderson

EFFECTIVE DATE: July 1, 1989, or Upon Becoming A Law, Whichever Occurs Later

DATE BECAME LAW: June 28, 1989

CHAPTER #: 89-208, Laws of Florida

COMPANION BILL(S): CS/SB 1398 by Commerce and Senator Crenshaw

OTHER COMMITTEES OF REFERENCE: (1) Finance & Taxation
(2) Appropriations

I. SUMMARY:

CS/CS/HB 1317 provides changes to the current lottery laws including recommendations of the Department of the Lottery for changes to current law to reduce expenses and to increase their operating efficiency. Various areas are addressed in the bill.

The definition of "major procurement" is revised to exclude contracts for goods and services relating to marketing and promotion under \$25,000, thus, exempting those contracts from certain requirements. However, the requirements for major procurement contracts exceeding \$25,000 remain in effect.

The bill also provides that all employees of the department are subject to the standards of conduct adopted by rule for career service and senior management employees pursuant to ch. 110, F.S., in addition to the supplemental code of ethics currently adopted by rule by the department. In the event of a conflict as to which standards of conduct apply, the more restrictive standard would apply to department employees. The Commission on Ethics, upon request of an advisory opinion, may provide interpretations as to the more restrictive standard and that opinion would be considered final action.

In addition, the bill increases the percentage of lottery funds transferred to education to 37.5% of gross revenue. The department is also required to inform the public about the significance of lottery funding to the state's overall system of public education. Moreover, the bill includes a change in the definition of the basis

Storage name: \wp\sa\h1317-f.ri

DATE: June 8, 1989

PAGE: 2

for calculating the amount of funds to be returned to the public in the form of prizes and to be transferred to the Educational Enhancement Trust Fund. The bill also permits retention of a working capital reserve for problems such as major, unanticipated, prize payments and fluctuations in revenue.

Furthermore, the bill revises the provisions relating to the deposit of moneys in the Administrative Trust Fund and the investment of moneys available for the payment of prizes on a deferred basis. The investments of deferred lottery prizes would now be handled by the State Board of Administration.

Other areas in the bill pertain to requiring affidavits for purposes of investigations or proceedings, allowing a non-CPA from a CPA firm to witness the drawings, allowing the department more authority in the area of counterfeit tickets, clarifying the use of "Florida Lottery," permitting the sale of lottery tickets by retailers located along the Florida Turnpike, and providing a criminal penalty for impersonating lottery special agents or lottery investigators.

A. PRESENT SITUATION:

Lotto grand prize winners of more than \$1,000,000 are paid in 20 equal annual installments funded by 19 separate zero coupon bonds held with the State Treasurer. The State Treasurer assesses an annual investment fee of 0.1% against the average daily balance of amounts invested for payment of major prize winners by the department. Presently, it is unclear as to whether the assessment fee will be deducted from the periodic payment to the winners or charged to the department. After the initial purchase of the zero coupon bonds, little management by the Treasury is required. However, the fee is assessed continually over the life of the remaining bond. Over time, the management fee will become substantially larger.

The Department of the Lottery has the authority to "enter into contracts for the purchase, lease, or lease-purchase of such goods and services as are necessary for the operation and promotion of the state lottery, including assistance provided by any governmental agency" pursuant to s. 24.105(18), F.S. The department enters into many contracts with vendors, retailers, and other agencies.

Currently, all contracts for goods and services relating to marketing and promotion are considered a major procurement as defined in s. 24.103(5), F.S. The requirements applicable to major procurements include full financial responsibility, security and integrity investigations for any person who submits a bid, proposal, or offer, and mandatory performance bond and liquidated damages requirements.

The department contracts with many small businesses for promotional goods and services. Prior to entering each contract with these small businesses, the department must conduct security and investigation procedures to meet the requirements for a major procurement. Small businesses are not always equipped to

Storage name: \wp\sa\h1317-f.ri

DATE: June 8, 1989

PAGE: 3

routinely handle the types of technicalities such as posting performance bonds. In addition, departmental compliance with these requirements for the numerous small businesses the department contracts with may not be cost-effective.

Currently, pursuant to s. 24.105(3), F.S., the department has the power to administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence for purposes of any investigation or proceeding conducted by the department. The department has been advised by the Joint Administrative Procedures Committee that specific statutory authority is required in order for the department to require affidavits. Section 92.50(1), F.S., pertains to oaths, affidavits, and acknowledgements; who may take or administer; and requirements.

Section 24.118(3), F.S., provides criminal penalties for those who submit counterfeit or altered tickets. However, the department has encountered some problems with certain people that have submitted false claims for payment without a valid ticket.

Section 338.234, F.S., currently prohibits the sale of lottery tickets on the Florida Turnpike. The Department of Transportation has recently awarded a 15-year contract to Marriott Corp., for turnpike concessions. The contract includes a provision permitting negotiation for the sale of lottery tickets.

Section 843.08, F.S., currently provides a criminal penalty for impersonating an officer of certain named law enforcement agencies. Officers of the department such as lottery special agents and lottery investigators are not included in this provision.

B. SECTION-BY-SECTION ANALYSIS:

Section 1: In conjunction with section 3 of the bill, this section revises the definition of "major procurement." Section 24.103(5), F.S., would be amended to exclude contracts for goods and services relating to marketing and promotion under \$25,000 from the definition of major procurement. Thus, those businesses meeting this qualification would be exempt from the requirement of providing performance bonds and passing full financial and security investigations except where the Lottery Department believes such requirements are needed for financial security.

Section 2: This section pertains to three topics. It amends s. 24.105(3), F.S., to allow the department to require affidavits for purposes of any investigation or proceeding. The department has requested affidavits for various purposes. For example, affidavits are required from winners who have jointly signed a winning lottery ticket. These winners must sign an affidavit stating that payment will be made in only one person's name. Another example of requests for affidavits has been from building officials and retailers for compliance with the handicap accessibility laws. However, the department has been advised by

Storage name: \wp\sa\h1317-f.ri
DATE: June 8, 1989
PAGE: 4

the Joint Administrative Procedures Committee that specific statutory authority is required in order for the department to require affidavits.

Another topic in this section amends s. 24.105(10)(d), F.S., to allow lottery game drawings to be witnessed by an accountant employed by an independent certified public accounting firm. Presently, these drawings are required to be witnessed by an independent certified public accountant. The department has stated that the change is necessary to allow more flexibility in contracting for this service and to reduce costs. For example, the drawings may be witnessed by senior accountants in the certified public accounting firm rather than certified public accountants for purposes of reducing costs.

Finally, the last topic in this section amends s. 24.105(21)(d), F.S., addressing the standards of conduct for lottery department employees. Present law provides that all employees of the department are exempt from the Career Service System and are not included in either the Senior Management Service or the Select Exempt Service. The department is also currently allowed to adopt by rule a code of ethics which supplements the standards of conduct for public officers and employees imposed by law. The bill provides that all employees of the department are subject to the standards of conduct adopted by rule for career service and senior management employees pursuant to ch. 110, F.S. In the event of a conflict as to which standards of conduct apply, the more restrictive standard would apply to department employees. The Commission on Ethics, upon request of an advisory opinion, may provide interpretations as to the more restrictive standard and that opinion would be considered final action.

Section 3: In conjunction with section 1, this section pertains to the area of "major procurements." In their financial audit report for fiscal year ending June 30, 1988, Coopers & Lybrand recommended that a minimum dollar amount be established for contracts required to meet the standards of a major procurement.

This section revises s. 24.111, F.S., to require a performance bond of the vendor at the time of executing the contract with the department in those cases where the major procurement exceeds \$25,000. The department would retain the ability to require such bonds in contracts for major procurements under \$25,000 where necessary to protect the financial interests of the state.

In addition, disclosure would be required of every vendor and a liquidated damages clause would only be required for contracts exceeding \$25,000. Again, the department would retain the flexibility to require the liquidated damages clauses where necessary to protect the financial interests of the state.

This section would reduce the investigation and security costs to the department. Based on recent experience, the department has indicated that approximately 100 contracts with values under \$25,000 are subject to the major procurement requirements. The average value of these contracts or purchase orders is \$4,350.

Storage name: \wp\sa\h1317-f.ri

DATE: June 8, 1989

PAGE: 5

TRW, Inc., credit bureau assesses a fee for each credit report requested. The Florida Department of Law Enforcement charges a unit price for investigations. The average cost to conduct investigations by FDLE is \$56 for each potential vendor.

Section 4: This section provides penalties for those who file false claims for payment. Any person who files with the department a claim for payment based upon facts alleged by the claimant which facts are untrue and the claimant knows these facts to be untrue would be guilty of a felony of the third degree.

In addition, this section addresses unlawful representation. Any charitable or commercial enterprise, product, or service that uses the term "Florida Lottery," "State Lottery," "Florida State Lottery," or any similar term without permission from the department is guilty of a misdemeanor of the first degree. This clarifies some ambiguity in the current language.

Section 5: This section revises the provisions relating to the deposit of moneys in the Administrative Trust Fund and the investment of moneys available for the payment of prizes on a deferred basis. First, deposits into the Administrative Trust Fund would include all money that remains after payment of prizes and initial compensation paid to retailers. Currently, the compensation paid to retailers and the payment of prizes of winners are paid from gross sales prior to the transfer of remaining funds to the Treasury. This provision will not change current procedure but will, in fact, conform statutes to actual practice. Second, the investments of deferred lottery prizes would now be handled by the State Board of Administration in accordance with a trust agreement entered into between the department and State Board of Administration pursuant to ss. 215.44-215.53, F.S., and in accordance with statutory standards.

Currently, the assessment charged by the Treasury for investment of the Lotto Grand Prize pool is estimated at \$433,530 in 1989-90 and \$616,341 in 1990-91. Assuming that Lotto sales remain at their fiscal year 1990-91 levels, the management fee will grow to \$1.7 million by fiscal year 2006-07. To the extent that Lotto sales increase or decrease from those levels, the fee will likewise change.

The financial audit report by Coopers & Lybrand suggested that "as the bonds require very little management after the initial purchase, an ever increasing management fee may not be appropriate. We recommend that the Department examine alternatives to the current arrangement."

The State Board of Administration has indicated that the fee they will charge is considerably less and will be on a cost recovery basis estimated at 0.02% of the average daily balance of the funds. According to the department, this translates into a substantial reduction in costs which will have the effect of reducing operating expenses. Based on the 0.02% assessment, charges are estimated at \$86,706 for 1989-90 and \$123,268 for

Storage name: \wp\sa\hl317-f.ri
DATE: June 8, 1989
PAGE: 6

1990-91. Cost savings are estimated at \$346,824 for 1989-90 and \$493,073 for 1990-91.

This section also authorizes the department to retain \$25,000,000 as a working capital reserve for major, unanticipated, prize payments and fluctuations in revenue. Should sales decline in future periods, for whatever reason, a loan from the State Treasury is the only mechanism currently available to the department to make payments in the event of a big prize payout. However, this loan would not be available under the time constraints needed by the department and must be repaid by the end of the fiscal year. In the event there is a big prize payout just prior to the end of the fiscal year, the department would be unable to comply with the repayment.

This provision was recommended by Coopers & Lybrand in their financial audit report for the fiscal year ending June 30, 1988, urging that consideration be given to allowing the department to "fund a working capital reserve from surplus funds which are in excess of statutory requirements and administrative expenses."

The department has indicated that the \$25,000,000 needed to fund the working capital reserve would be transferred from retained earnings. The amounts remaining after the transfer to the reserve would be deposited into the Educational Enhancement Trust Fund (see the final provision in section 6 of the bill).

Section 6: This section changes the definition of the basis for calculating the amount of funds to be returned to the public in the form of prizes and to be transferred to the Educational Enhancement Trust Fund. The financial audit report of Coopers & Lybrand recommended that this section of the law be revised to clarify the distinction between revenues and the restrictions on the use of deposits within the Administrative Trust Fund.

The new language is intended to eliminate the ambiguity in defining lottery revenue receipts and the resulting conflicting interpretations as to the amounts intended to be appropriated by the Legislature. The effect would be to only include ticket sales for purposes of distributing the funds returned to the public in the form of prizes. Receipts such as interest earnings and retailer application fees would not be included in the amounts returned to the public. However, there will be no fiscal impact as a result of this provision because the department is currently following this practice without the benefit of clear statutory authority.

The bill also changes the percentage of lottery revenues to be deposited into the Educational Enhancement Trust Fund to 37.5% of the gross revenue from the sale of lottery tickets and other earned revenue, excluding application processing fees. Adjusted estimates of moneys transferred to education including earned income from lottery net proceeds would be \$596,460,000 in 1989-90 and \$619,858,875 in 1990-91. The fiscal impact of the increase in recurring general revenue is \$46.8 million for 1989-90 and \$48 million for 1990-91.

Storage name: \wp\sa\h1317-f.ri
DATE: June 8, 1989
PAGE: 7

Currently, each fiscal year, the mandated distribution of lottery revenues per s. 24.121, F.S., is as follows: at least 50% of the moneys is to be returned to the public in the form of prizes, at least 35% is to be deposited into the EETF for the benefit of public education, and the funds remaining, after payment of prizes and transfers to the EETF, are for payment of administrative expenses of the Department of the Lottery. By increasing the percentage of lottery funds transferred to education, the distribution of lottery proceeds that is returned to the public in the form of prizes is not affected. However, the percentage of funds available for administrative expenses would be decreased.

Finally, the bill addresses the unencumbered balance remaining in the Administrative Trust Fund at the end of each fiscal year. Any unencumbered amounts remaining will be transferred to the Educational Enhancement Trust Fund.

Section 7: This section would permit retailers along the turnpike system to contract with the Florida Lottery to sell lottery tickets. Currently, there are 8 service plazas along the Florida Turnpike. The department anticipates that there is the potential for the service plazas to exceed statewide average sales. Due to the large number of travellers along the Turnpike, these locations could effectively tap the tourist sector of the lottery ticket market.

Section 8: This section would provide a criminal penalty for impersonating lottery special agents or lottery investigators.

Section 9: The section would require the department to inform the public about the significance of lottery funding to the state's overall system of public education.

Section 10: This act will take effect July 1, 1989, or upon becoming a law, whichever occurs later.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT: FY 89-90 FY 90-91

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

REVENUES:

Department of Lottery		
Projected Sales at Turnpike	\$ 793,169	\$ 865,354
Savings from investment in the State Board Administration	183,040	346,824

TRANSFER:
From the Administrative Trust
Fund to the Educational
Enhancement Trust Fund 46,800,000 48,000,000

(See Fiscal Comments)

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

REVENUES:
Administrative Trust Fund 793,169 865,354

TRANSFER:
From the Administrative Trust
Fund to the Educational
Enhancement Trust Fund 46,800,000 48,000,000

(See Fiscal Comments)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

Small businesses currently not equipped to meet the requirements of a major procurement, such as performance bonds, would be permitted to contract with the department.

Storage name: \wp\sa\h1317-f.ri
DATE: June 8, 1989
PAGE: 9

Retailers along the Florida Turnpike would have the opportunity to contract with the Florida Lottery to sell tickets.

D. FISCAL COMMENTS:

The section regarding the revision of the term "major procurement" would reduce the investigation and security costs to the department.

The retention of a working capital reserve has no fiscal impact to the department. The department has indicated that the \$25,000,000 would be transferred from the retained earnings account. The unencumbered balance remaining at the end of each fiscal year would be transferred to the Educational Enhancement Trust Fund.

The projected sales at the turnpike is if the department were to contract with one retailer at each of the eight service plazas along the Florida Turnpike.

The recurring money being transferred to the Educational Enhancement Trust Fund is a 2.5% increase, making it a 37.5% requirement. It is calculated from sales and miscellaneous income.

The Lottery will save \$183,040 for FY 89-90 and \$346,824 for FY 90-91 because of the change in the agency managing the investment of lotto grand prize funds from the State Treasury to the State Board Administration.

III. LONG RANGE CONSEQUENCES:

The portion of the bill regarding lottery retailers along the turnpike and the additional revenue it would generate for public education appears consistent with the following portions of the State Comprehensive Plan:

Section 187.201(1) Education

(a) Goal.--The creation of an educational environment which is intended to provide adequate skills and knowledge for students to develop their full potential, embrace the highest ideas and accomplishments, make a positive contribution to society, and promote the advancement of knowledge and human dignity.

(b) Policies.--

3. Ensure salaries, benefits, and other incentives which will attract and retain high-quality educators in the numbers needed to meet the educational needs of an increasing population.

12. Invest in the educational system today to teach the basic and advanced skills that will ensure its

students are prepared to become productive citizens and that will attract the industry of tomorrow.

CS/CS/HB 1317 reflects the education policies outlined above in s. 187.201(1), F.S., in addition to the many policies encouraging new programs, opportunities for education and accessibility to educational facilities.

The portions of the bill relating to increased departmental efficiency appears consistent with the following portion of the State Comprehensive Plan:

Section 187.201(21) Governmental Efficiency

(a) Goal.--Florida governments shall economically and efficiently provide the amount and quality of services required by the public.

(b) Policies.--

9. Encourage greater efficiency and economy at all levels of government through adoption and implementation of effective records-management, information-management, and evaluation procedures.

The portions of the bill relating to increased departmental powers appears consistent with the following portion of the State Comprehensive Plan:

Section 187.201(21) The Economy

(a) Goal.--Florida shall promote an economic climate which provides economic stability, maximizes job opportunities, and increases per capita income for its residents.

(b) Policies.--

12. Encourage the development of a business climate that provides opportunities for the growth and expansion of existing state industries, particularly those industries which are compatible with Florida's environment.

The portions of the bill relating to increased lottery sales appears consistent with the following portion of the State Comprehensive Plan:

Section 187.201(24) Tourism

(a) Goal.--Florida will attract at least 55 million tourists annually by 1995 and shall support efforts by all areas of the state wishing to develop or expand tourist-related economies.

Storage name: \wp\sa\h1317-f.ri
DATE: June 8, 1989
PAGE: 11

(b) Policies.--

1. Promote statewide tourism and support promotional efforts in those parts of the state that desire to attract visitors.

IV. COMMENTS:

The Department of the Lottery is in favor of this bill. However, the department does not support statutory language increasing the percentage transferred to education.

CS/CS/HB 1317 is consistent with the House of Representatives, Regulated Industries Committee Mission Statement to "insure that the Department of the Lottery is being operated effectively, fairly, and at the lowest cost by means of a thorough review."

To the extent that this bill provides more money to public education, it is consistent with the House of Representatives Policy Statement relating to priority funding for education:

HUMAN RESOURCE DEVELOPMENT

I. Children's Services

D. Funding for education at all levels is a top priority.

1. There is a widely held public misperception that the lottery has solved the funding problems in education.
 - a. Lottery dollars must be made visible. The public needs to be made aware of how that money is used.
 - b. Lottery money should be used to build and equip new schools and enhance existing facilities and programs, not as replacement revenue.
 - c. Additional education dollars must be raised at the local level through citizen involvement and consensus, such as local option referenda based on full and adequate information to the citizenry.
2. The capital outlay funding needs of higher education must be kept in mind. PECO funding was designed to pay for higher education construction costs, but it has been used to meet the needs in the K-12 level.

Legislative History 1989 Session

A. Enacted Bill

House Bill 1317 was prefiled by Representatives Long and Lombard on March 24, 1989. On March 27, 1989, it was referred to the Committee on Regulated Industries and on March 28 it was subreferred to the Subcommittee on the Lottery. As originally

Storage name: \wp\sa\h1317-f.ri
DATE: June 8, 1989
PAGE: 12

proposed the bill contained recommendations of the department to change current law.

On April 4, 1989, the bill was introduced and referred to Regulated Industries, Finance & Taxation, and Appropriations (HJ 00126). The Subcommittee on the Lottery reported the bill favorably as a Proposed Committee Substitute on April 12, 1989. The Committee on Regulated Industries passed the bill by a favorable vote as a Committee Substitute on April 17, 1989.

The Committee on Finance & Taxation voted the bill favorably with two amendments on May 17, 1989. The Committee on Appropriations passed the bill favorably as a Committee Substitute for a Committee Substitute on May 18, 1989, and it was subsequently placed on the Calendar (HJ 00657).

The bill passed with amendments on May 31, 1989, by a vote of 112-0 (HJ 00893). The bill was subsequently substituted for CS/SB 1398 with a vote of 37-0 on June 1, 1989, (SJ 00700), and ordered enrolled.

B. Disposition of Companion

Senate Bill 1398 was filed on April 11, 1989, by Senator Crenshaw. On April 19, 1989, it was introduced and referred to Commerce, Governmental Operations, Finance, Taxation & Claims, and Appropriations (SJ 00192). The Committee on Commerce reported the bill favorably as a Committee Substitute on May 2, 1989, (SJ 00257). The Committee on Governmental Operations reported the bill favorable with two amendments on May 17, 1989, (SJ 00380). The bill was subsequently withdrawn from both the Committee on Finance, Taxation and Claims, and the Committee on Appropriations, and placed on the Calendar (SJ 00448, SJ 00629). On June 1, 1989, the bill was laid on the table and substituted by CS/CS/HB 1317 (SJ 00700).

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Maisy Alpert
Maisy Alpert

Staff Director:

Wyatt Martin
Wyatt Martin

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: May 17, 1989

BILL NO. CS/SB 1398

DATE: May 17, 1989

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Jones</u>	<u>Wilkes</u>	1. <u>COM</u>	<u>Fav/CS</u>
2. <u>Kane</u>	<u>Stengle</u>	2. <u>GO</u>	<u>Fav/2 amend.</u>
3. _____	_____	3. <u>FTC</u>	_____
4. _____	_____	4. <u>AP</u>	_____

SUBJECT: State Lottery; Administration

BILL NO. AND SPONSOR: CS/SB 1398 by Commerce Committee and Senator Crenshaw

I. SUMMARY:

A. Present Situation:

The Department of the Lottery was created by ch. 87-64, L.O.F., to run state lottery games as authorized by Article X, s. 15, Fla. Const., and as specified by ch. 24, F.S.

Section 24.105(18), F.S., authorizes the department to contract for the purchase of goods and services. A "major procurement," as defined by s. 24.103(5), F.S., includes all contracts for goods and services relating to the marketing and promotion of the lottery. Section 24.111(2), F.S., 1988 Supp., requires the department to investigate the financial responsibility, security, and integrity of any person who submits a bid, proposal, or offer as part of a major procurement. Each vendor in a major procurement must also post a bond in an amount deemed sufficient by the department to adequately protect the state's interests. In addition, every contract entered into by the department under s. 24.111, F.S., 1988 Supp., must contain a provision for payment of liquidated damages to the department for any breach of contract by the vendor.

The department contracts with many small businesses for promotional goods and services. In the department's estimation, not all small businesses are equipped to obtain the required performance bond, and the requirement for a detailed investigation may not be cost-effective for contracts for relatively small amounts. The department estimates that, presently, approximately 100 contracts with values averaging \$4,350 are subject to the requirements of a major procurement, and must comply with the performance bond and the liquidated damages requirements.

Section 24.108, F.S., 1988 Supp., establishes a Division of Security within the department; the division's certified investigators are designated as law enforcement officers and have the power to investigate and arrest for alleged violations of the Florida Public Education Lottery Act and accompanying rules. Pursuant to s. 24.105(3), F.S., 1988 Supp., the department is empowered to administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, and documents and other evidence, for the purposes of investigations or proceedings conducted by the department. The law does not authorize the department to require affidavits, and the department has been advised by the Administrative Procedures Committee of the Joint Legislative Management Committee that specific statutory authority is necessary.

Section 24.105(10)(d), F.S., 1988 Supp., requires that an independent certified public accountant witness lottery game drawings. According to the department, it would be more economical for the department if the required witness to the drawing could be an accountant who has not yet achieved

certified public accountant status, but who works under the supervision of a certified public accounting firm.

In connection with the financial responsibility, security, and integrity investigation that the department is required to conduct of prospective vendors, pursuant to s. 24.111, F.S., 1988 Supp., the law requires that any potential vendor submit minimum information, at the time of submitting a bid or proposal, relating to the nature of the entity, the business it conducts, the business reputation of the entity, and its financial stability. The department is not permitted to contract for a major procurement with any vendor who has not made the required disclosure, and contracts made with such vendors are unenforceable.

Coopers & Lybrand, Certified Public Accountants, performed performance and financial audits of the department for FY 1987-88. The resulting *Financial Statements and Compliance Reports* recommended that consideration should be given to quantifying the amount of the performance bond required under s. 24.111, F.S., 1988 Supp., and that the provision for payment of liquidated damages should be made applicable to contracts of a minimum dollar amount.

Section 24.118(3), F.S., provides criminal penalties for those who knowingly present a counterfeit or altered ticket for payment, transfer such a ticket to another to present for payment, or alter, forge, counterfeit, or alter a state lottery ticket with the intent to defraud.

Section 24.118, F.S., prohibits the unauthorized use of terms indicating the name of the Florida Lottery in reference to an enterprise other than the Florida Lottery.

Section 24.120, F.S., 1988 Supp., requires that all moneys received by the department are to be deposited into the Administrative Trust Fund which was created in the State Treasury to be administered in accordance with chapters 215 and 216, F.S.

The State Treasurer, pursuant to s. 18.125, F.S., is required to invest all general revenue funds, agency funds, and trust funds of each state agency unless otherwise excepted by law, and the treasurer assesses an annual investment fee of 0.1 percent against the average daily balance. Currently, the State Treasurer manages the Lotto Grand Prize Pool. Lotto Grand Prize winners of more than \$1 million are paid in 20 equal installments funded by 19 separate zero-coupon bonds held with the State Treasurer.

Presently, it is unclear whether the assessment fee is to be deducted from the periodic payment to the winners or charged to the department. After the initial purchase of the bond, little management by the State Treasurer is required; however, the fee is assessed continually over the life of the bond. The Coopers & Lybrand report notes that, while the fee was not significant for FY 1987-88, the management fee "will become substantially larger over the next few years." Because the bonds require little management after the initial purchase, the report questioned the appropriateness of an increasing management fee.

Section 24.120(2), F.S., 1988 Supp., permits the investment of moneys for the payment of prizes on a deferred basis in either United States Treasury Bonds or in annuities issued by insurance companies authorized to do business in Florida when specified criteria are met. Qualified companies have a policyholder surplus of not less than \$200 million and not less than 15 percent of liabilities, or, alternatively, a policyholder surplus of not less than \$1 billion and an "A+" rating as of the latest rating period by A. M. Best and Company. Not more than \$20 million in premiums for outstanding

obligations may be invested by the State Treasurer in any one insurance company.

The department is not authorized to retain a working capital reserve. The Coopers & Lybrand report recommended that consideration be given to allowing the department to fund a working capital reserve from surplus funds which are in excess of statutory requirements and administrative expenses.

Section 24.121, F.S., requires that, of the moneys in the Administrative Trust Fund, at least 50 percent are to be returned to the public in the form of prizes paid by the department or retailers, 35 percent are to be deposited in the Educational Enhancement Trust Fund administered by the Department of Education, and the remaining 15 percent are permitted to be used for the payment of administrative expenses of the department. The Coopers & Lybrand report noted that the wording of the law does not make a distinction between the different types of monies deposited into the fund, and currently includes interest earnings and retailer application fees which are a reimbursement of expenses to the department. The report recommended clarifying the law to make a distinction between revenues and the use of deposits within the Administrative Trust Fund. Currently, the department has \$57.8 million in retained earnings, the 15 percent that remains after payment of prizes and the transfers to the Educational Enhancement Trust Fund. According to the department, this amount is higher than originally anticipated due to the efficiency of the department's operations, and lower operating costs after the first year's startup expenses.

Section 338.234(1), F.S., 1988 Supp., does not authorize the Department of Transportation to grant concessions or authorize the sale of state lottery tickets on the Florida turnpike system.

Section 843.08, F.S., prohibits impersonation of specified law enforcement officers. Impersonation of law enforcement agents of the Department of the Lottery, however, is not included in the prohibition.

B. Effect of Proposed Changes:

The bill would implement changes recommended by the Department of the Lottery relative to the administration of the State Lottery and lottery funds in order to reduce the expenses of the department and to increase its efficiency. The proposed changes to the law are analyzed section-by-section as follows:

Section 1. The procurement of goods and services relating to marketing and promotion in excess of a value of \$25,000 would be deemed a "major procurement." Thus, for contracts in the amount of \$25,000 or less, vendors would not be subject to the financial and security investigation required, or subject to the provisions for supplying background information.

Section 2. The department would be granted the authority to require affidavits for the purposes of any investigation or proceeding conducted by the department.

Relating to the security of lottery game drawings, the wording of the law would be changed to require each drawing to be witnessed by a accountant employed by an independent certified public accounting firm, rather than by a certified public accountant.

Section 3. Technical changes would be made to the disclosure requirements regarding financial and other information for vendors submitting a bid, proposal, or offer as part of a major procurement. Other changes would be made to accommodate the exemption from the definition of major procurement for goods and services relating to marketing and promotion in amounts of

\$25,000 or less. The department would be able to require disclosure of background information from any vendor, in the discretion of the department, in order to protect the dignity and integrity of the lottery and in the best interests of the state. Vendors in a major procurement, and any other vendor as deemed necessary by the department in order to protect the best interests of the state, would be required to post a performance bond at the time of executing the contract with the department. For every contract in excess of \$25,000, and for every other contract as deemed necessary by the department to protect the best interests of the state, a liquidated damages provision would be required.

Section 4. Filing a claim for payment based upon facts known to be false when the claim is made would be a felony of the third degree. Thus, the department could take action against false claims made in attempt to commit fraud regarding the lottery, without proof of actual altering or forging of the lottery ticket.

Any person who makes unauthorized use of the name of the lottery or similar variations in the title or name of any charitable or commercial enterprise, product, or service would be guilty of a misdemeanor of the first degree.

Section 5. All money received by the department which remains after the payment of prizes and commissions would be required to be deposited into the Administrative Trust Fund. The department would be responsible for the investment of moneys available for the payment of prizes on a deferred basis.

New standards would be required for companies to qualify for the sale of annuities to the department for the investment of moneys available for the payment of prizes on a deferred basis. The companies would be required to have a policyholder surplus of not less than \$1 billion and, among four requirements, would have an "AAA" rating or the highest rating available from Moody's Investor's Life Insurance Claims Paying Rating, and an "AAA" rating or the highest rating available from Standard & Poor's Corporation Life Insurance Company Rating. Failure to meet the requirements annually would render the company ineligible for participation until the requirements had been met for 5 consecutive years. Companies with outstanding obligations that do not meet these requirements would be required to post collateral equal to the present value of the outstanding obligation, utilizing eligible collateral as specified by law.

The amount permitted to be invested in any one company would be doubled, and a time period for calculating the investment would be specified so that the department would not be permitted to invest more than \$40 million in premiums for outstanding obligations in any one insurance company annually.

The department would be permitted to retain \$25 million as a reserve for working capital.

Section 6. This section would change the definition of the basis for calculating the amount of funds available to be allocated in the form of prizes, and the amount to be deposited in the Educational Enhancement Trust Fund, so that retailer application fees would not be included, in accordance with present departmental practice. It would be specified that each fiscal year, at least 35 percent of the gross revenue from the sale of lottery tickets and other earned revenue, excluding application processing fees, would be deposited in the Education Enhancement Trust Fund.

In addition, the unencumbered balance remaining in the Administrative Trust Fund at the end of each fiscal year would be required to be transferred to the Education Enhancement Trust Fund.

Section 7. The Department of Transportation would be authorized to grant concessions for the sale of state lottery tickets by authorized retailers.

Section 8. The false impersonation of a lottery special agent or lottery investigator would be a third degree felony.

Section 9. The act would take effect upon becoming law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Qualified businesses entering into contracts with the department to provide goods and services involving marketing and promotion in amounts of \$25,000 or less would not be required to meet the investigatory and bonding requirements for the provision of a major procurement, unless deemed necessary by the department to protect the interests of the state.

B. Government:

The department estimates that elimination of the credit, security, and bond requirements for contracts for the sale of goods and services for marketing and promotion would reduce the department's expenses for investigation and security, without jeopardizing the financial interest of the state.

The department estimates that because the \$57.8 million in retained earnings of the department were unanticipated and were therefore not addressed in the Appropriations Act, retention of a \$25 million working capital reserve would have no fiscal impact.

The department estimates that the 0.1 percent annual assessment charged by the State Treasurer for investment of the Lotto Grand Prize pool will be \$433,530 for FY 1989-90, and will be approximately \$616,341 for FY 1990-91. The department does not anticipate that it will require additional funding to administer the Lotto Grand Prize Investment Pool without additional funding.

The department projects that the sale of tickets from the service plazas on the Florida Turnpike could exceed current statewide average sales, because of the large number of travelers along the turnpike. The department estimates that if it contracted with one retailer in each of the eight service plazas on the Florida Turnpike, the projected revenues could be as much as \$793,169 in FY 1989-90, resulting in a transfer to the Education Enhancement Trust Fund of \$277,609, and as much as \$865,354 in FY 1990-91, resulting in a transfer to the trust fund of \$302,874.

III. COMMENTS:

Although the department states that the retention of a working capital fund of \$25 million is necessary to handle major unanticipated expenditures, the statutory language authorizing the department to maintain such a fund contains no restrictions on the purposes for which the department may use the fund.

The exemption from the definition of "major procurement" for goods and services for marketing and promotion which exceed a value of \$25,000 does not specify a time period for which the dollar amount is to be calculated, and does not prohibit the division of such sales to bring more sales within the exemption.

IV. AMENDMENTS:

#1 by Governmental Operations:
Changes language requiring a person to "disclose" certain information, to language requiring a person to "provide" certain

REVISED: May 17, 1989

BILL NO. CS/SB 1398

DATE: May 17, 1989

Page 6

information to the department for its investigation of the person submitting a bid, proposal, or offer on a major procurement.

#2 by Governmental Operations:

Makes clarifying and technical changes to the wording of the provision that adds, to the list of offenses that constitute third degree felonies, filing false claims for payment with the department based on facts known by the claimant to be false.

SENATE COMMITTEE AMENDMENT

CS/SB 1398

No. 1
(reported favorably)

HB _____

The Committee on...Gov. Operations....recommended the following amendment which was moved by Senator.....and adopted: and failed:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Senate Amendment

On page4....., line14....., strike

all of said line

If amendment is text from another bill insert:

Bill No.	Draft No.	With Changes?	No Yes -

and insert:

proposal, or offer, provide to-the-department-all-of the

CODING: Words stricken are deletions; words underlined are additions.

 * Amendment No. 1, taken up by committee: 05/17/89 Adopted x *
 * Offered by Senator Crenshaw Failed *

(Amendment No. _____ Adopted _____ Failed _____ Date __/__/__)

SENATE COMMITTEE AMENDMENT

CS/SB 1398

No. 2
(reported favorably)

HB _____

The Committee on...Gov. Operations....recommended the following amendment which was moved by Senator.....and adopted: and failed:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31

Senate Amendment

On page9....., lines ..5 & 6..., strike

all of said lines

If amendment is text from another bill insert:

Bill No.	Draft No.	With Changes?	No <input type="checkbox"/>	Yes <input type="checkbox"/>
----------	-----------	---------------	-----------------------------	------------------------------

and insert:

(d) Files with the department a claim for payment based upon facts alleged by the claimant which facts are untrue and known by the claimant to be untrue when the claim is made;

CODING: Words stricken are deletions; words underlined are additions.

* Amendment No. 2, taken up by committee: 05/17/89 Adopted x *

* Offered by Senator Crenshaw Failed *

(Amendment No. _____ Adopted Failed Date __/__/__)