



# The Florida Senate

Interim Project Report 2004-157

November 2003

Committee on Regulated Industries

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## REVIEW OF CHAPTER 550, F.S.

### SUMMARY

This report discusses the pari-mutuel licensing requirements, how race dates and times are determined, provides an overview of simulcast and intertrack wagering, and describes legislative history of ch. 550, F.S., over the past seven years. It also reviews the ongoing litigation regarding the simulcast and intertrack wagering provisions of ch. 550, F.S., and describes the tax rates for the different pari-mutuel industries in Florida. This report is limited to these issues because a complete review of every aspect of chapter 550, F.S., was not possible in the timeframe available for this study. The report makes recommendations regarding changes to ch. 550, F.S.

### BACKGROUND

The regulation of the pari-mutuel industry is governed by ch. 550, F.S. Regulation is administered by the Division of Pari-Mutuel Wagering (division) within the Department of Business and Professional Regulation (DBPR). The pari-mutuel industry consists of thoroughbred racing, harness racing, greyhound racing, jai alai, and cardrooms located at pari-mutuel facilities. According to the division, there are 31 active permits to operate at 26 pari-mutuel facilities. This consists of 18 greyhound permits operating at 16 greyhound tracks, 7 jai alai permits operating at 5 frontons, 5 thoroughbred permits operating at 4 thoroughbred tracks, and 1 harness permit operating at 1 harness track. There are also 9 inactive permits of which 2 are greyhound permits, 3 are jai alai permits, and 4 are quarter horse permits. Horseracing wagering permits can not become inactive. However, there is currently an administrative action by DBPR against the Hialeah Racing Association to revoke its license for failure to run its licensed dates for the last two years. This case is pending before the Florida Division of

Administrative Hearings (DOAH).<sup>1</sup>

### METHODOLOGY

In preparation of this report, committee staff met with representatives of the DBPR, the pari-mutuel industry, and the Office of Program Policy Analysis and Government Accountability (OPPAGA). Staff reviewed the 2003 OPPAGA Justification Review for the Pari-Mutuel Industry,<sup>2</sup> legislative history, and current law and current litigation involving ch. 550, F.S.

### FINDINGS

#### LICENSING REQUIREMENTS, PERMITS AND RACING TIMES

Section 550.01215, F.S., requires each permitholder to file a written license application between December 15 and January 4 to conduct performances during the next state fiscal year. The application must specify the number, dates, and starting times of all performances the permitholder intends to conduct and which will be conducted as charity or scholarship performances.<sup>3</sup>

This provision also provides exceptions for thoroughbred racing, consequences for failure to operate all performances as specified on its license, and for the administration of vacated, abandoned or unused licenses, and converted jai alai permits.

The division fixes the time, place, and number of days during which a pari-mutuel facility may conduct races

<sup>1</sup> DOAH case no. 03-1459

<sup>2</sup> Section 11.51, F.S., requires OPPAGA to complete a justification review of each state agency program that is operating under a performance-based program budget.

<sup>3</sup> s. 550.054, F.S., requires that prior to this application process, the application for a permit to conduct pari-mutuel wagering must be filed with the division

or games.<sup>4</sup> However, s. 550.5251, F.S., provides for a “Florida Thoroughbred Racing Season” for thoroughbred permitholders who conducted races between January 1, 1987 and January 1, 1988. For these permitholders, the racing season is limited from June 1 of any year through May 31 of the following year.

## SIMULCAST AND INTERTRACK WAGERING

In its review, OPPAGA concluded that over the last decade, Florida’s pari-mutuel wagering industry has declined steadily, showing a substantial decrease in betting on live races, due in part to increased competition from the state lottery, tribal casinos, and gambling cruise ships<sup>5</sup>. However, OPPAGA does report that there has been an increase in simulcast wagering.

The provisions relating to simulcasting and intertrack wagering are found in various sections of ch. 550, F.S.

Section 550.002(32), F.S. defines simulcasting as:

broadcasting events occurring live at an in-state location to an out-of-state location, or receiving at an in-state location events occurring live at an out-of-state location by the transmittal, retransmittal, reception, and rebroadcast of television or radio signals by wire, cable, satellite, microwave, or other electrical or electronic means for receiving or rebroadcasting the events.

Intertrack wagering is defined in s. 550.002(17), F.S., as:

a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, in-state track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal rebroadcast from, another in-state pari-mutuel.

Simulcasting and intertrack wagering interactions occur at guest and host tracks. Host tracks transmit signals to a guest track and the guest track takes wagers on that signal. Host tracks are tracks or frontons that conduct a live or simulcast race or game that is the subject of an

intertrack wager.<sup>6</sup> A guest track is a track or fronton receiving or accepting an intertrack wager.<sup>7</sup> All costs of racing transmissions of the broadcasts are the guest track’s responsibility, and all costs of the sending the broadcast are the host track’s responsibility.<sup>8</sup>

All money wagered by patrons of the Florida track on simulcast races is computed as part of the total live handle at that track and is taxed at the track’s live rate. The handle is the aggregate wagers that go to the pari-mutuel pool for pari-mutuel races and games.<sup>9</sup> Handle is generated when wagers are placed at an out-of state facility on a Florida race and are taxed in the state where the wager is taken.

Simulcasting may only be accepted between facilities with the same class of pari-mutuel wagering permit,<sup>10</sup> e.g., horseracing permitholders may only receive and broadcast signals from other horseracing permitholders. However, simulcasting also includes the rebroadcast of the signal to in-state permitholder and certain exceptions apply.<sup>11</sup> Simulcast signals must be made available to all permitholders eligible to conduct intertrack wagering under the provisions of ss. 550.615-550.6345, F.S.<sup>12</sup>

Broadcasts of horseraces both to and from this state must also comply with the provisions of the Interstate Horseracing Act of 1978 (IHA).<sup>13</sup> The IHA requires that the permitholder receive the consent of the host racing association, host racing commission, and off-track racing commission as a prerequisite to acceptance of a wager.

Section 550.615, F.S., creates specific limitations on the exchange of intertrack signals, including the following limitations:

- The track or fronton must be licensed and must have conducted a full schedule of live racing in the preceding year to receive broadcasts and accept wagers.<sup>14</sup>
- Host tracks may require a guest track within 25

<sup>6</sup> s.. 550.002(16), F.S.

<sup>7</sup> s. 550.002(12), F.S.

<sup>8</sup> s. 550.615(10), F.S.

<sup>9</sup> s. 550.002(13), F.S.

<sup>10</sup> s. 550.3551, F.S.

<sup>11</sup> s. 550.615, F.S.

<sup>12</sup> s. 550.6305(9), F.S.

<sup>13</sup> 92 Stat. 1811, 15 U.S.C. ss. 3001 et seq.

<sup>14</sup> s. 550.615(2), F.S.

<sup>4</sup> s. 550.01215(3), F.S.

<sup>5</sup> OPPAGA Justification Review, Report No. 03-56, October 2003.

miles of another permitholder to receive in any week at least 60 percent of the host track's live races that the host track is making available on the days that the guest track is operating live races or games.<sup>15</sup>

- A host track may also require, when the guest track is not operating live and is within 25 miles of another permitholder, that it accept 60% of the host track's live races that it is making available in that week.
- Permitholders may not attempt to restrain a permitholder from sending or receiving intertrack wagering broadcasts.
- Provisions of this subsection are applicable to Dade, Broward, Pinellas, Hillsborough, Duval, Volusia, Clay, and Seminole Counties.
- Guest tracks within the market area (a market area is defined as an area within 25 miles of a permitholder's track or fronton<sup>16</sup>) of the operating permitholder must receive consent from the host track to receive the same class signal.<sup>17</sup>
- Permitholders within the market area of the host track must have the consent of the host track to take an intertrack wager. For example, Tampa Greyhound Track (Associated Outdoor Club, Inc.) could not accept wagers on races from Tampa Bay Downs, Inc., (TBD) without TBD's permission.<sup>18</sup>
- When there are three or more horserace permitholders within 25 miles of each other (this is currently applicable to Dade and Broward Counties) a greyhound or jai alai permitholder may accept intertrack wagers on races or games conducted live by a permitholder of the same class or any harness permitholder located within such area.<sup>19</sup>
  - Any harness permitholder may accept

wagers on games conducted live by any jai alai permitholder located within its market area and from a jai alai permitholder located within the area when no jai alai permitholder located within its market area is conducting live performances.

- Greyhound or jai alai permitholders may receive broadcasts of, and accept wagers on, any permitholder as long as a permitholder, other than the host track, is not operating a contemporaneous live performance within the market area.
- In any county of the state where there are only two pari-mutuel permitholders, a permitholder is required to receive the written consent of the other permitholder if it wishes to conduct intertrack wagering and is not conducting live races or games. If neither permitholder is conducting live races or games, wagers may be accepted on horseraces, games, or both.<sup>20</sup> This is applicable to Volusia and Palm Beach counties, however, the jai alai permits are not active.
- In any three contiguous counties where there are only three greyhound permitholders, a permitholder who leases a facility of another permitholder to conduct its live race meet may conduct intertrack wagering throughout the year, including the time the live meet is being conducted at the leased facility. For example, in North Florida, St. Johns Greyhound (a.k.a. Bayard Raceways), located in St. Johns County, does not run live races but leases its meet out to the Orange Park Kennel Club, Inc., in Clay County. By doing so, Bayard Raceways is able to receive intertrack wagering at its facility.<sup>21</sup>
- In any two contiguous counties where there are four active permitholders consisting of one for thoroughbred, two for greyhound, and one for jai alai, no intertrack wager may be accepted on the same class of live races or games of any permitholder without the written consent of such operating permitholders conducting the same class of live races or games if the guest

<sup>15</sup>s. 550.615(3), F.S.

<sup>16</sup>s. 550.002(13), F.S.

<sup>17</sup>s. 550.615(4), F.S.

<sup>18</sup>s. 550.615(5), F.S.

<sup>19</sup>s. 550.615(6), F.S.

<sup>20</sup> s. 550.615(7), F.S.

<sup>21</sup> s. 550.615(8), F.S.

track is within the market area of such operating permitholder. This provision originally applied to Pinellas and Hillsborough counties. However, the fronton in Tampa (Florida Gaming Centers) currently has an inactive permit.<sup>22</sup> However, the requirement in s. 550.615(4), F.S., for the written consent remains applicable.

## LEGISLATIVE HISTORY

There have been significant changes to the simulcast and intertrack wagering law over the past 7 years. This summary tracks those changes and describes how the laws were changed.

In 1996, ch. 96-364, L.O.F., affected simulcasting in several ways. It amended s. 550.615(6), F.S., by allowing simulcasting for all permitholders, except for greyhounds. It authorized greyhound permitholders in Dade and Broward counties to conduct simulcasting. It required that in order to receive simulcasting, all permitholders, except for harness permitholders, must be conducting live performances. Previously, consent was required in the former South Florida area before any permitholder in the area could engage in intertrack wagering.

The act also created s. 550.615(9), F.S., which provides that in any area where only four active permits are located within two contiguous counties, no intertrack wagers can be accepted by a guest track on thoroughbred races when the thoroughbred permitholder is licensed to operate live without the written consent of another thoroughbred permitholder.

It created s. 550.6305(9)(c), F.S., to provide that the statutory distribution of net proceeds to the host track, host track purses, and guest track may be amended by contract among the host and guest permitholders and the horsemen's association at the host track.

It also created s. 550.6305(9)(f), F.S., to provide that a permitholder, other than a harness permitholder, must be conducting a live race meet in order to receive or rebroadcast an out-of-state signal.

Finally, the act also created s. 550.6305(9) (g) to provide that if a thoroughbred permitholder accepts wagers on an out-of-state simulcast signal, it must make such signal available to any eligible permitholder, provided that no thoroughbred permitholder is required

to rebroadcast such signal to any permitholder if the average gross daily returns to the host are less than \$100 per performance based on a 30-day period.

In 1998, ch. 98-190, L.O.F., amended s. 550.01215(1) and (5), F.S., by allowing a thoroughbred permitholder to receive and rebroadcast out-of-state races after 7 p.m. rather than between the hours of 7 p.m. and 10 p.m.

This act again amended s. 550.6305(9)(g), F.S., by placing conditions on the receipt of rebroadcasts of thoroughbred simulcast signals by making the receipt of such signals subject to the provisions of s. 550.615(4), F.S., which prohibits a permitholder from accepting intertrack wagers on the same class of race or game as is being conducted by a permitholder of the same type within a market area without written permission by that operating permitholder. It further requires that as a condition of accepting such signal, that a guest track must accept intertrack wagers on all live races being conducted by all thoroughbred permitholders that are conducting live races.

In 2000, ch. 2000-354, L.O.F., created s. 550.615(8), F.S., to authorize any greyhound track located in one of three contiguous counties where there are only three permitholders, all of which are greyhound permitholders (the Jacksonville market area), and which leases another greyhound track in the same market area for purposes of conducting live racing to also receive intertrack wagering at the leased facility when it is conducting its live races or games at the leased facility.

In 2003, ch. 2003-295, L.O.F., amended s. 550.5251, F.S., to eliminate the requirement for thoroughbred racing permitholders to choose between a simulcast race after 7 p.m. or operating a cardroom. It was amended to allow thoroughbred permitholders, in counties where cardrooms are approved, to operate a cardroom when they are conducting live races and to receive and rebroadcast out-of-state races after the hour of 7 p.m. on any day the permitholder conducts live races.

It also expanded the hours of operating a cardroom by allowing their operation between the hours of 12 noon and 12 midnight on any day a pari-mutuel event is conducted live.

## LITIGATION

There are several pending lawsuits that are challenging

<sup>22</sup> s. 550.615(9), F.S.

the simulcasting and intertrack wagering laws.

In the case of *Gulfstream Park Racing Association v. Tampa Bay Downs, Inc., et al*, Case No. 8:03-CV-135-T-30, which is pending in the U.S. District Court in Tampa, Florida, Gulfstream is seeking a declaratory judgment and injunctive relief against Tampa Bay Downs (TBD). Gulfstream alleges that TBD could not receive the simulcast of races because it has exclusive distribution agreements for the simulcasting of pari-mutuel races conducted at several out-of-state venues. Gulfstream had previously entered into simulcast agreements with several out-of-state pari-mutuel facilities and contends that it has acquired the exclusive rights to broadcast races pursuant to the Copyright Act.

The State of Florida became a party to this action on April 29, 2003, on Order from the U.S. District court notifying the State of Florida that the proper application and constitutionality of state law was included as a substantive issue before the Court.

Tampa Bay Downs then requested that the Division of Pari-mutuel wagering issue a declaratory statement regarding such exclusive agreements. The Division issued the statement and opined that exclusive agreements for simulcasting violated s. 550.615(3), F.S., and rule 61D-9.001, F.A.C.

As part of its case, Gulfstream is seeking a declaration that, as interpreted and applied by the division through a declaratory statement regarding exclusive disseminator agreements, s. 550.615(3) and 550.6305(9)(g), F.S., and R. 61D-9.001, F.A.C., conflict with and are preempted by the Copyright Act.

In the case of *Gulfstream Park Racing Association v. Division of Pari-Mutuel Wagering and PPI, Inc., d/b/a/ Pompano Park Racing v. Division of Pari-Mutuel Wagering*, case no. 2002 CA 2971, Gulfstream and Pompano Park Racing have filed suit against the division challenging the implementation and constitutionality of s. 550.615(6), F. S. This suit was filed after the department filed administrative complaints against Gulfstream and Pompano Park alleging that they had violated section 550.615(6), F.S., by exchanging intertrack wagering signals. Gulfstream has filed a motion for summary judgment that has been noticed for hearing on October 31, 2003.

*Calder Race Course, Inc., (Calder), and Tropical Park, Inc. (Tropical) v. Department of Business and Professional Regulation , Division of Pari-Mutuel Wagering, Investment Corporation of Palm Beach and*

*Daytona Beach Kennel Club*, case no. 01 CA 1951, the plaintiff permitholders have filed a five count complaint seeking a declaratory judgment and supplemental relief. The suit, in part, challenges the provisions of s. 550.6305(9)(d), F.S. The suit alleges that is unclear whether use of the term “any area of the state”, applies to Palm Beach County or Volusia County therefore making it impossible to determine which guest tracks, if any, would be entitled to 45% of the net proceeds from interstate simulcast wagering as required by s. 550.6305(9)(d), F.S. The suit is currently pending in Leon County Circuit Court.

In *Advisory Opinion to the Attorney General Re:Authorization For County Voters to Approve or Disapprove Slot Machines Within Existing Pari-Mutuel Facilities*, Case No. SC03-857, the Florida Supreme Court will issue an advisory opinion on whether a proposed constitutional amendment giving county voters in Miami-Dade and Broward Counties authorization to approve or disapprove slot machines in existing pari-mutuel facilities complies with the requirements for a proposed a constitutional amendment<sup>23</sup> and whether the proposed ballot title and substance comply with s. 101.161, F.S.

## TAXES

Pari-mutuel permitholders pay taxes on the handle from live performances, simulcast wagering, intertrack wagering, and intertrack simulcast wagering. In 2000, ch. 2000-354, L.O.F., decreased the tax rates for permitholders.<sup>24</sup> However, chapter 550, F.S., provides tax credits or exemptions for various permitholders which can significantly decrease tax liability.

The division reports that during the fiscal year (FY) 2002-03, the total handle reached \$1.5 billion wagered, which has decreased by 4 percent from the prior fiscal year. The state realized revenue from regular performances of approximately \$30.8 million, which reflects an 8 percent decrease from the prior fiscal year and the total paid attendance also decreased by over 3 percent from the prior year.<sup>25</sup>

During FY 2002-03, the division reports that the handle wagered at live greyhound performances

<sup>23</sup> Art. XI, s. 3, Fla. Const.

<sup>24</sup> Tax rates were also decreased in 1996 by ch. 96-364, L.O. F.

<sup>25</sup> All numbers reported by the division for fiscal year 2002-03 are not final, however the division reports that any changes should be minimal.

decreased by 11 percent and the intertrack handle wagered on broadcasts of live Florida greyhound performances decreased by 2 percent from the prior year. Simulcast and intertrack simulcast amounts wagered on broadcasts of greyhound performances from outside the state decreased by 21 percent and 19 percent, respectively, resulting in a 7 percent decline for the Florida greyhound industry.

The total tax paid to the state by the greyhound permitholders during FY 2002-03 declined by 12 percent from the prior year. The handle wagered on broadcasts of live performances decreased by 11 percent. The intertrack handle wagered on live Florida greyhound performances decreased by 2 percent. The simulcast and intertrack simulcast handle wagered on broadcasted performances from outside the state decreased by 21 percent and 19 percent respectively, with a net effect on total handle of a 7 percent decline. The greyhound industry accounted for approximately 56 percent of Florida's total revenue from pari-mutuel performances. Section 550.1647, F.S., provides that greyhound permitholders receive credits applicable against taxes in an amount equal to the uncashed tickets remitted to the state in the prior fiscal year. Each permitholder is required to pay an amount equal to 10 percent of the amount of the credit received to a bona fide organization that promotes or encourages greyhound adoptions.

During FY 2002-03, total contributions provided to greyhound adoption units amounted to \$256,150, which amounts exceeded the minimum statutory requirement as well as the previous fiscal year's total contributions.

The division reports that during the FY 2002-03, the handle wagered at live jai alai performances decreased by 14 percent. However, the intertrack handle wagered on broadcasts of live Florida jai alai performances increased by 6 percent. Simulcast and intertrack simulcast handle wagered on broadcasts of performances from outside the state decreased by 100 percent. The division reports that the significant decrease in the simulcast handle was due to the conclusion of live jai alai activity at some of the out of state facilities.<sup>26</sup> Total tax to the state during fiscal year 2002-03 declined by 2 percent from the prior year. The industry accounted for approximately 28 percent of Florida's total revenue from pari-mutuel performances.

The division reports that during FY 2002-03, the handle wagered at live harness performances decreased by 13 percent. The intertrack handle wagered on broadcasts of live Florida harness performances increased by 1 percent. The simulcast and intertrack simulcast handle wagered on broadcasts of performances from outside the state decreased by 2 percent and increased by 7 percent respectively. Total handle resulted in a 1 percent overall increase for the Florida harness industry.

The total tax to the state during FY 2001-2002, increased by 1 percent from the prior year. The harness industry accounted for approximately 5 percent of Florida total revenue from pari-mutuel performances.

The division reports that during the FY 2002-03, the handle on live thoroughbred performances decreased by 5 percent and intertrack handle wagered remained the same. The simulcast and intertrack simulcast handle wagered on broadcasts of performances from outside the state decreased by 4 percent and increased by 2 percent, respectively. The total handle resulted in a 1 percent decrease for the Florida thoroughbred industry. Tax revenue to the state remained virtually the same from the prior year. The thoroughbred industry accounted for approximately 37 percent of Florida's total revenue and 51 percent of total handle from pari-mutuel performances.

Article VII, section 7, of the Florida Constitution requires that taxes on the operation of pari-mutuel pools may be preempted to the state or allocated, in whole or in part, to the counties. If it is allocated to the counties, it requires an equal distribution to the counties. In 1980, a fixed lump sum of \$29,915,500 was legislatively determined as the amount to be evenly distributed among the counties from the pari-mutuel trust fund.

In 2000, ch. 2000 354, L.O.F., changed the distribution of the \$29,915,500. The act required this money to be distributed to county governments from state sales and use tax revenues<sup>27</sup> instead of the pari-mutuel tax revenues. The act also required that all unappropriated funds over \$3.5 million in the Pari-Mutuel Wagering Trust Fund be deposited in the General Revenue Fund.<sup>28</sup>

The General Revenue Estimating Conference's projected that the tax revenue to be distributed to the

<sup>26</sup> No other state in the U.S. is operating jai alai at this time.

<sup>27</sup> s. 212.20, F.S.

<sup>28</sup> s. 550.135, F.S.

General Revenue Fund from the Pari-Mutuel Trust Fund by the division will be \$21 million for the FY 2003-04 and \$20.5 million for the FY 2004-05.<sup>29</sup> These tax revenues are distributed from the General Revenue Fund but are not commingled with the distribution to the counties.

As can be seen from the table, the tax rates vary dramatically between the different pari-mutuel permitholders.

The following table shows various tax rates for intertrack wagering (ITW) and intertrack simulcast wagering (ISW).

<b>Thoroughbreds</b>		
<b>Live and simulcast</b>	<b>1999</b>	<b>2000</b>
Calder/Tropical	1.25%	0.50%
Gulfstream Park	2.00%	0.50%
Gulfstream Park	2.00%	2.00%
Tampa Bay Downs	0.50%	0.50%
<b>Thoroughbreds ITW</b>		
	<b>1999</b>	<b>2000</b>
ITW	3.30%	2%
ITW between thoroughbreds	3.30%	0.50%
If a host track sends ITW outside its market area to a guest track in the market area of a live thoroughbred track	3.30%	0.5
ITW of ISW	2.40%	2.40%
Live and simulcast harness	1%	0.50%
ITW	3.30%	3.30%
ITW of ISW	2.40%	1.50%
<b>Greyhounds</b>		
	<b>1999</b>	<b>2000</b>
Live and simulcast	7.60%	5.50%
ITW	7.6	5.50%
If a host track sends ITW outside its market area to a guest track in the market area of a live thoroughbred track	7.6% or 6.00%	0.5
ITW exchanged in Jacksonville,	6%	3.90%
ITW of ISW	7.60%	5.50%
Charity performances	7.60%	7.60%
<b>Jai Alai</b>		
	<b>1999</b>	<b>2000</b>
If a host track sends ITW outside its market area to a guest track in the market area of a live thoroughbred track	7.1% or 3.3% or 6.1% or 2.3%	0.5
Live rates	4.25% or 3.85% or 2.55%	No higher than 2%
Simulcasts		Taxed at same rate as live events
<b>Quarter Horses</b>		
	<b>1999</b>	<b>2000</b>
Live rate	3.30%	1.00%
Simulcast	3.30%	1.00%
ITW	3.30%	2.00%

## RECOMMENDATIONS

Staff recommends that:

Any proposed changes to ch. 550, F.S., should consider the pending litigation challenging the constitutionality of certain sections of the chapter.

Any proposed changes to the chapter should consider the changes' impact on all segments of the pari-mutuel industry.

Any proposed changes to the chapter should also consider how the changes would affect tax revenues.

<sup>29</sup> These numbers are from the March 14, 2003 General Revenue Estimating Conference, adjusted for the 2003 and 2003A Session law changes.