

Regulatory Reform & Economic Development Subcommittee

Tuesday, February 7, 2023
2:00 PM - 4:00 PM
Sumner Hall (404 HOB)

Meeting Packet

Paul Renner
Speaker

Tyler Sirois
Chair

The Florida House of Representatives

Commerce Committee

Regulatory Reform & Economic Development Subcommittee

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Meeting Agenda

Tuesday, February 7, 2023
2:00 PM – 4:00 PM
Sumner Hall (404 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

CS/HB 85 Causes of Action Based on Improvements to Real Property by Civil Justice Subcommittee, Snyder

V. Presentations:

The Economic Status and Impact of Gaming in Florida and the Florida Lottery by Florida's Office of Economic and Demographic Research

An Update on the Status of Gaming Control in Florida by the Florida Gaming Control Commission

An Update on the Status of the Florida Lottery by the Florida Lottery

VI. Closing Remarks

VII. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 85 Causes of Action Based on Improvements to Real Property
SPONSOR(S): Civil Justice Subcommittee, Snyder
TIED BILLS: **IDEN./SIM. BILLS:** SB 360

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 3 N, As CS	Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
3) Judiciary Committee			

SUMMARY ANALYSIS

A "construction defect" is a deficiency in, or arising out of, the design, specifications, surveying, planning, supervision, or observation of construction, or the construction, repair, alteration, or remodeling of real property, and includes a Florida Building Code ("Building Code") violation. Causes of action which may be available for a construction defect claim include breach of contract or warranty, fraud, negligence, and a statutory cause of action under s. 553.84, F.S., for Building Code violations.

Section 95.11(3)(c), F.S., establishes the time periods within which a construction defect cause of action must be brought. Specifically, for a patent (that is, obvious or known) defect, an action must generally be filed within four years from the date of the later of the:

- Owner's actual possession;
- Issuance of a certificate of occupancy;
- Construction's abandonment, if not completed; or
- Completion or termination of the engineer's, architect's, or contractor's contract with his or her employer.

However, for a latent (that is, not easily discoverable) defect, the four-year statute of limitations begins to run on the date the defect was discovered or should have reasonably been discovered with due diligence. In any event, the statute of repose in this section provides that in no case may a construction defect claim be filed more than ten years after the later of any event triggering the statute of limitations for patent defects.

CS/HB 85:

- Modifies the time periods within which a construction defect cause of action must be brought by:
  - Changing the point from which the four-year statute of limitations begins to run for patent defects to the date of the earliest of the following events:
    - Issuance of a temporary certificate of occupancy;
    - Issuance of a certificate of occupancy;
    - Issuance of a certificate of completion;
    - Construction's abandonment, if not completed; or
    - Completion or termination of the specified professional's employment contract.
  - Decreasing the statute of repose from ten years to seven years, generally running from the earliest of the listed triggering events for the statute of limitations.
  - Specifying that each dwelling unit within a multi-dwelling building must be considered its own improvement for purposes of determining the limitations period.
  - Giving plaintiffs a set period of time to sue if these changes would otherwise cut off their rights.
- Limits the statutory Building Code violation cause of action to a "material" violation.

The bill may have an indeterminate fiscal impact on state government, but does not appear to have a fiscal impact on local government. The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Building Code

The Florida Building Codes Act ("Building Code"), set out in part IV of ch. 553, F.S., provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single state building code that must be applied, administered, and enforced uniformly and consistently across the state.[1] The Building Code is adopted and interpreted by the Florida Building Commission, housed within the Department of Business and Professional Regulation ("DBPR"), and enforced by local governments.[2]

The Building Code's primary purpose is the regulation of new construction and existing structure modifications to achieve the highest safety level and the fewest construction defects.[3] To accomplish this, the Building Code sets minimum standards for the design, construction, erection, alteration, modification, repair, and demolition of structures in the state.

Plan Review and Building Permits

Each local government must issue building permits for construction projects within its jurisdiction.[4] However, the building official may not issue a building permit before first reviewing the plans and specifications and finding that such plans and specifications comply with the Building Code.[5] No person, firm, or corporation may construct, erect, alter, repair, secure, or demolish any structure without first obtaining a building permit, if required, from the building official.[6]

Inspections and Violations

For any construction requiring a building permit, the building official[7] must inspect the work to ensure that it complies with the Building Code.[8] Where a local government determines that an engineer, architect, or contractor has committed a "material violation" of the Building Code and failed to correct the violation within a reasonable time, the local government must impose a fine on such licensee of no less than $500 and no more than $5,000 per violation.[9] A "material violation," as the term is used here, is a violation existing within a completed building, structure, or facility which may result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems.[10]

[1] S. 553.72(1), F.S.
[2] Ss. 125.56, 553.72, 553.73, and 553.74, F.S.
[3] Fla. Bldg. Comm., *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Jan. 26, 2023).
[4] A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific construction activity. Ss. 125.01(1)(bb), 125.56(1), 468.603(2), and 553.80(1), F.S.
[5] Ss 125.56 and 553.79, F.S.
[6] Building permits are generally not required for cosmetic improvements, such as painting or flooring replacement. S. 553.79, F.S.
[7] A building official is a local government employee or a person contracted with a government entity who supervises building code activities. *Id.*
[8] *Id.*
[9] S. 553.781, F.S.
[10] *Id.*

Certificates of Completion or Occupancy

The building official issues a certificate of completion where an existing building or structure is renovated or remodeled without a change in its occupancy or use, or when a shell building[11] is newly constructed, and such work passes its final building inspection.[12] Where a new structure to be occupied[13] passes its final building inspection, the building official issues a certificate of occupancy.[14] A building or structure requiring a certificate of completion or occupancy generally may not be used or occupied until the appropriate certificate is issued; however, the building official may issue a temporary certificate of completion or occupancy before the project's close if a portion of the building or structure may be safely used or occupied.[15] The temporary certificate grants the applicant the same rights as a certificate of completion or occupancy but expires after a set time period unless the building official grants an extension.[16] A building official may also suspend or revoke a temporary or final certificate of occupancy or completion if the certificate was issued in error or on the basis of incorrect information or where it is determined that the building or structure is in violation of any ordinance, regulation, or Building Code provision.[17]

Statutes of Limitations and Repose

A statute of limitations bars a lawsuit's filing after a certain amount of time elapses following an injury.[18] This time period typically begins to run when a cause of action accrues (that is, on the date of the injury), but may also begin to run on the date the injury is discovered or on which it would have been discovered with reasonable efforts.[19] In other words, a statute of limitations bars the available civil remedy if a lawsuit is not timely filed after an injury.

A statute of repose bars the filing of a lawsuit after a fixed period of time passes following a specific act, which act is unrelated to the cause of action's accrual or the injury's discovery, even if this period ends before the plaintiff is injured.[20] Further, a statute of repose eliminates the underlying substantive right of action, not just the available civil remedy, upon expiration of the statutorily-specified filing period.[21] Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed, which encourages diligence in the prosecution of claims, eliminates the potential for abuse resulting from a stale claim, and fosters finality in liability.[22]

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[11] A shell building separates a structure's interior space from its exterior and generally consists of the foundation, outer walls, roofing, windows, and exterior doors. When a shell building is constructed, the developer leaves the structure's interior unfinished so that the purchaser or tenant may contract with other construction professionals to customize its elements (including flooring, ceilings, interior walls, interior doors, and electrical fittings). Nassau County Building/Code Enforcement Department, *Guidelines for Shell Building and Tenant Build-Out Permits*, https://www.nassaucountyfl.com/DocumentCenter/View/13984/Guidelines-for-Shell-Building-and-Tenant-Build-Out-Permits?bidId (last visited Jan. 26, 2023).

[12] Passage of a final building inspection would include obtaining approvals for all permits issued for the project (such as building and fire permits and sub-permits such as electrical, mechanical, elevator, plumbing, and roof permits). S. 553.79(17)(a), F.S.; S. 110, Fla. Bldg. Code, 7th Ed. (2020).

[13] This includes an existing building or structure for which the occupancy classification is changing.

[14] S. 111, Fla. Bldg. Code, 7th Ed. (2020).

[15] Typically, the building official also requires that any outstanding work be nearing completion before issuing a temporary certificate. *See, example*, City of Tampa, *Apply for a Temporary Certificate of Occupancy*, https://www.tampa.gov/document/apply-temporary-certificate-occupancy-tco-35571 (last visited Jan. 26, 2023)(requiring an applicant for a temporary certificate of occupancy to affirm that construction will be complete within 90 days); *Id.*

[16] S. 111, Fla. Bldg. Code, 7th Ed. (2020).

[17] *Id.*

[18] Legal Information Institute, *Statute of Limitations*, https://www.law.cornell.edu/wex/statute_of_limitations (last visited Jan. 26, 2023).

[19] *Id.*

[20] Legal Information Institute, *Statute of Repose*, https://www.law.cornell.edu/wex/statute_of_repose (last visited Jan. 26, 2023); *Kush v. Lloyd*, 616 So. 2d 415 (Fla. 1992).

[21] *Beach v. Great Western Bank*, 692 So. 2d 146 (Fla. 1997).

[22] *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).

Construction Defect Claims

A "construction defect" is a deficiency in, or arising out of, the design, specifications, surveying, planning, supervision, or observation of construction, or the construction, repair, alteration, or remodeling of real property[23] resulting from:

- Defective material, products, or components used in construction or remodeling;
- A Florida Building Code violation;
- A failure of real property's design to meet the applicable professional standards of care at the time of governmental approval; or
- A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction in place at the time of construction.[24]

Available Causes of Action

Causes of action which may be available for a construction defect claim include breach of warranty,[25] breach of contract[26] (if the parties are in privity[27]), fraud, and negligence.[28] Florida law also provides a statutory cause of action in s. 553.84, F.S., for Building Code violations. Specifically, this section provides that any person damaged as a result of a Building Code violation has a cause of action against the person responsible. However, unless the person responsible knew or should have known of the violation, there is no cause of action if:

- The person responsible obtains the required building permits and any local government or public agency with Building Code enforcement authority approves the plans;
- The construction project passes all required inspections; and
- There is no personal injury or damage to property other than the property that is the subject of the permits, plans, and inspections.

In order to bring a cause of action based on a construction defect claim, a property owner must first satisfy pre-suit requirements set out in ch. 558, F.S., unless the property owner and the person to be sued have opted out of ch. 558 in writing.[29] These statutory pre-suit requirements include providing the person to be sued with notice of the claim, and opportunities to inspect the alleged defect and make a settlement offer, which may include monetary payments or an offer to repair the defect.[30]

[23] "Real property" means land that is improved and the improvements thereon, including fixtures, manufactured housing, or mobile homes. S. 558.002(8), F.S.
[24] S. 558.002(5), F.S.
[25] Warranties may be expressly provided by the developer or contractor or implied in common law or statute.
[26] A contract forms when an offer is made and the offered terms are accepted. Where one party to a contract fails to perform his or her duties under the contract, a breach of contract claim arises. Awardable damages are generally limited to those damages specified in the contract; in other words, punitive damages (that is, damages awarded above the actual damages to punish the person responsible) are generally unavailable. *Suarez Trucking FL Corp. v. Souders*, 350 So. 3d 38 (Fla. 2022); *Lewis v. Guthartz*, 428 So. 2d 222 (Fla. 1982).
[27] Parties are in privity when they are in direct contract with one another. Legal Information Institute, *Privity*, https://www.law.cornell.edu/wex/privity (last visited Jan. 26, 2023).
[28] Negligence is a tort. To prevail in a negligence action, the plaintiff must prove that the defendant owed him or her a duty, the defendant breached the duty, and the plaintiff suffered damages proximately caused by the breach. However, a negligence claim does not exist where the defendant only breached a duty owed under a contract; in such case, the plaintiff would have to prove that the defendant breached a non-contractual duty owed to the plaintiff, such as a statutory or common law duty. *U.S. v. Stephens*, 994 So. 2d 1062 (Fla. 2008); *Monroe v. Sarasota County Sch. Bd.*, 746 So. 2d 530 (Fla. 2d DCA 1999); *Goldberg v. Fla. Power & Light Co.*, 899 So. 2d 1105 (Fla. 2005).
[29] Parties who opt out of chapter 558 may contractually negotiate a mandatory alternative dispute resolution process or other pre-suit requirements. S. 558.005(1), F.S.
[30] Ss. 558.003 and 558.004, F.S.

Applicable Statutes of Limitations and Repose

Section 95.11(3)(c), F.S., establishes the time periods within which a construction defect cause of action must be brought. Specifically, for a patent defect,[31] an action must generally be filed within four years from the date of the later of the:

- Owner's actual possession;
- Issuance of a certificate of occupancy;
- Construction's abandonment, if not completed; or
- Completion or termination of the engineer's, architect's, or contractor's contract with his or her employer.[32]

However, for a latent defect,[33] the four-year statute of limitations begins to run on the date the defect was discovered or should have reasonably been discovered with due diligence. In any event, the statute of repose in this section provides that in no case may a construction defect claim be filed more than ten years after the later of any event triggering the statute of limitations for patent defects. In other words, a construction defect claim is time-barred after ten years from the later of any of the events listed above even where the defect is not yet discovered or could not reasonably have been discovered with the exercise of due diligence.

Multi-Dwelling Buildings

The Building Code defines "dwelling" as any building containing one or two dwelling units used, intended, or designed to be built, used, rented, leased, let, or hired out to be occupied, or that are occupied for living purposes.[34] In turn, the Building Code defines "dwelling unit" as a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.[35] Multi-dwelling buildings may include unit-style condominium ("condo") or cooperative ("co-op") buildings, multi-family homes (such as a duplex or triplex), and townhouses; whether or not a multi-dwelling building is a part of a condo or co-op depends not on its appearance but rather on whether it has been organized as such under Florida law. Special considerations apply to construction defect claims involving condos and co-ops.

Condominiums

A condominium, or "condo," is a form of real property ownership created under ch. 718, F.S., and generally regulated by DBPR. Persons own condo units along with an undivided right of access to the condo's common elements.[36] All unit owners are members of the condo association, and the association is responsible for common elements operation and maintenance.[37]

A condo is created by recording a declaration of condominium in the public records of the county where the condo is located.[38] A developer initially creates the condo and offers condo units for sale, and while the condo is developer-controlled, the developer may elect all or a majority of the members of the condo association's board of administration.[39] However, unit owners other than the developer may elect

[31] A "patent defect" is a defect that is reasonably apparent or known to the owner. *Alexander v. Suncoast Builders, Inc.,* 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003); Legal Information Institute, *Patent Defect*, https://www.law.cornell.edu/wex/patent_defect (last visited Jan. 26, 2023).
[32] "Completion of the contract" means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made. S. 95.11(3)(C), F.S.
[33] A "latent defect" is a hidden defect that cannot be discovered by reasonable and customary observation or inspection, and of which the owner has no knowledge. *Alexander,* 837 So. 2d at 1058; Legal Information Institute, *Latent Defect*, https://www.law.cornell.edu/wex/latent_defect#:~:text=A%20hidden%20or%20concealed%20defect,and%20customary%20observation%20or%20inspection (last visited Jan. 26, 2023).
[34] S. R202, Fla. Bldg. Code, 7th ed. (2020).
[35] Id.
[36] "Common elements" means the portions of condo property not included in the units. S. 718.103(8) and (11), F.S.
[37] Ss. 718.103(2) and 718.113(1), F.S.
[38] S. 718.104(2), F.S.
[39] S. 718.103(16), F.S.

a majority of the condo association's board members after "turnover," which occurs at the earlier of specified events.[40]

Cooperatives

A cooperative, or "co-op," is a form of property ownership created under ch. 719, F.S., in which the real property is owned by the co-op association and individual units are leased to the residents, who own shares in the association.[41] The lease payment amount is the pro-rata share of the co-op's operational expenses. Co-ops operate similarly to condos, and the laws regulating co-ops are largely identical to those regulating condos.

Construction Defect Claims

At the point of turnover in a condo or co-op, Florida law requires the developer to provide the association with a written inspection report; however, this report is limited in scope to the maintenance, condition, replacement costs, and useful life of specified components and thus may not provide the association with any insight into the existence of a construction defect.[42] It is the responsibility of the association to conduct an exhaustive property evaluation and determine whether to bring a cause of action based on any discovered construction defects.[43]

If a construction defect is found in the condo's common elements or in individual units but is prevalent throughout the building, the association may bring a cause of action in its own name or on behalf of all unit owners.[44] However, a condo association does not have exclusive authority to sue over construction defects; the Florida Supreme Court has held that a unit owner may also bring such a claim, even where the defect is found in the common elements, if the interests of other unit owners are represented in the action or if the duty breached was owed only to a particular unit owner.[45]

Relevant to the consideration of whether to bring such an action is s. 718.124, F.S., which tolls the applicable four-year statute of limitations until turnover occurs; however, this section does not toll the ten-year statute of repose.[46] Practically speaking, this means that if a defect occurs during construction of a condo or co-op but turnover does not happen for eleven years after an event triggering the statute of repose, the association is time-barred from filing suit on the defect claim even if the statute of limitations had only just begun to run.

Further, in *Sabal Chase Homeowners' Association, Inc., v. Walt Disney World Co.*, the Fifth District Court of Appeal ("DCA") held that, where a project is multi-unit in nature and each unit is issued its own certificate of occupancy before the contract's completion, so that it can be occupied while other units are under construction, the statute of repose does not begin to run from the date of contract completion.[47] Rather, the statute of repose runs for each unit individually from the date its certificate of occupancy is issued. The court found that to rule otherwise would unfairly subject earlier-constructed units to a longer repose period than later-constructed units.

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[40] Ss. 718.124 and 718.301(1), F.S.
[41] S. 719.103(2) and (26), F.S.
[42] Ss. 718.301(4)(p) and 719.301(4)(p), F.S.
[43] In any claim against a developer, if a defect is found in a condo's design, construction, or structural elements, or in any mechanical, plumbing, electrical, fire protection, or other element that requires a licensed professional for design or installation under chapters 455, 471, 481, 489, or 633, F.S., the defect must be examined and certified by an appropriately-licensed Florida engineer, design professional, contractor, or other individual or entity. A condo or co-op association should also reference its governing documents to determine whether any restrictions exist that would impair its right to initiate litigation. S. 718.301(7), F.S.
[44] The exact percentage of affected units necessary to count as "prevalent" is unclear, but courts have found a defect impacting 90-100 percent of unit owners sufficient. Fla. R. Civ. P. 1.221; *Avila S. Condo. Ass'n, Inc. v. Kappa Corp.*, 346 So. 2d 599 (Fla. 1997); Seawatch at Marathon Condo. *Ass'n, Inc. v. Charley Toppino & Sons, Inc.*, 610 So. 2d 470 (Fla. 3d DCA 1992); *Brazilian Court Hotel Condo. Owner's Ass'n, Inc. v. Walker*, 584 So. 2d 609 (Fla. 4th DCA 1991); *El Conquistador Condo., Inc. v. Day*, 338 So. 2d 237 (Fla. 3d DCA 1976).
[45] *Rogers & Ford Constr. Corp. v. Carlandia Corp*, 626 So. 2d 1350 (Fla. 1993).
[46] *Spring Isle Comm. Ass'n, Inc. v. Herme Enter. Inc.*, 328 So. 3d 1120 (Fla. 5th DCA 2021).
[47] 726 So. 2d 796 (Fla. 3d DCA 1999).

Effect of Proposed Changes

CS/HB 85 amends s. 95.11, F.S., to modify the time periods within which a construction defect cause of action must be brought. Specifically, the bill:

- Changes the point from which the four-year statute of limitations begins to run for patent defects to the date of the earliest of the:
  - Issuance of a temporary certificate of occupancy;
  - Issuance of a certificate of occupancy;
  - Issuance of a certificate of completion;
  - Construction's abandonment, if not completed; or
  - Completion or termination of the engineer's, architect's or contractor's contract with his or her employer.
- Decreases the statute of repose from ten years to seven years, running from the date of the earliest of the:
  - Issuance of a temporary certificate of occupancy;
  - Issuance of a certificate of occupancy; or
  - Issuance of a certificate of completion.

  However, if none of these certificates are issued, the statute of repose runs from the date of the earlier of the:
  - Construction's abandonment, if not completed; or
  - Completion or termination of the engineer's, architect's, or contractor's contract with his or her employer.

The bill also:

- Specifies that each dwelling unit within a "multi-dwelling building" must be considered its own improvement for purposes of determining the limitations period, consistent with the reasoning of the Fifth DCA in the *Sabal Chase* case, described above.
- Provides that these amendments apply to any construction defect cause of action commenced on or after the bill's effective date, regardless of when the cause of action accrued, except that any such action that would not have been time-barred before these amendments must be commenced on or before July 1, 2024.

Finally, the bill amends s. 553.84, F.S., to limit the cause of action for a Building Code violation to a cause of action for a "material" Building Code violation, defined by the bill as a Building Code violation "that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems."[48] This limitation would apply even where the person responsible for a "non-material" Building Code violation knew or should have known that the violation existed and failed to repair it.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.
Section 2: Amends s. 553.84, F.S., relating to statutory civil action.
Section 3: Provides applicability.
Section 4: Provides an effective date of upon becoming a law.

[48] The bill does not specify what amounts to "significant damage," as the term is used in this section, or the degree of physical harm necessary for the violation to rise to the level of "material." *Cf.* s. 553.781, F.S. (using the same definition of "material violation" but for regulatory purposes).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate impact on state government to the extent that it reduces construction defect claim litigation in the state court system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct economic impact on the private sector is unknown. However, the bill:

- May leave consumers bearing the costs associated with:
  - Latent construction defects that are not or could not have been discovered within the shortened statute of repose.
  - Building Code violations not amounting to "material" violations where there is no other available cause of action.
- May reduce construction costs for consumers as savings realized by the construction industry due to lowered insurance premiums and litigation costs may be passed on to consumers.
- May reduce financial liability for the construction industry due to lowered insurance premiums and litigation costs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Due Process

The U.S. Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law."[49] Similarly, the Florida Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law…"[50]

Although the right to file a lawsuit is a valid and protected property interest,[51] a plaintiff has no vested right in a statute of limitations or repose in effect when his or her cause of action accrues.[52] A statute of limitations or repose may thus be either initially imposed or reduced by legislation and applied to an existing cause of action so long as the plaintiff still has a reasonable amount of time left in which to enforce his or her right to file a lawsuit.[53]

The bill addresses this issue by giving a plaintiff extra time to bring a suit if his or her right to sue would otherwise be cut off by the bill's changes to s. 95.11(3)(c), F.S.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 26, 2023, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Gave a plaintiff a set period of time to file a construction defect lawsuit if his or her right to sue had already accrued and would be cut off by changes to s. 95.311(3)(c), F.S., made by the bill.
- Added the word "unit" to clarify that each dwelling unit within a multi-dwelling building must be considered its own improvement for the purposes of determining the limitations periods.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

[49] U.S. Const. amend. 14.
[50] Art. 1, s. 21, Fla. Const.
[51] *See Polk Cnty BOCC v. Special Disability Trust Fund*, 791 So. 2d 581, 583 (Fla. 1st DCA 2001).
[52] *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).
[53] *Bauld v. J.A. Jones Const. Co.*, 357 So. 2d 401, 403 (Fla. 1978), quoting *Hart v. Bostick*, 14 Fla. 162 (1872); *Walter Denson & Son v. Nelson*, 88 So. 2d 120 (Fla. 1956).

A bill to be entitled

An act relating to causes of action based on improvements to real property; amending s. 95.11, F.S.; revising the time in which an action founded on the design, planning, or construction of an improvement to real property must be commenced; revising the date on which the statute of limitations period begins; providing for the calculation of the statute of limitations period for multi-dwelling buildings; amending s. 553.84, F.S.; defining the term "material violation"; conforming provisions to changes made by the act; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (3) of section 95.11, Florida Statutes, is amended to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.—

(c)1. An action founded on the design, planning, or construction of an improvement to real property, with the time running from ~~the date of actual possession by the owner,~~ the

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

date of the issuance of a temporary certificate of occupancy, the date of the issuance of a certificate of occupancy, the date of the issuance of a certificate of completion, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is earliest ~~latest~~; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence.

2. In any event, the action must be commenced within 7 ~~10~~ years after the date of ~~actual possession by the owner, the date of~~ the issuance of a temporary certificate of occupancy, the date of the issuance of a certificate of occupancy, or the date of the issuance of a certificate of completion, whichever date is earliest. If a temporary certificate of occupancy, a certificate of occupancy, or a certificate of completion has not been issued, the action must be commenced within 7 years after the date of abandonment of construction if not completed~~,~~ or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is earliest ~~latest~~.

3. However, counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction, or occurrence

set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred.

4. With respect to actions founded on the design, planning, or construction of an improvement to real property, if such construction is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time within which an action must be commenced. Completion of the contract means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

5. Notwithstanding any provision of this section to the contrary, each dwelling unit within a multi-dwelling building must be considered its own improvement for purposes of determining the limitations period set forth in this paragraph.

Section 2. Section 553.84, Florida Statutes, is amended to read:

553.84 Statutory civil action.—Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a material violation of this part or the Florida Building Code~~,~~ has a cause of action in any court of competent jurisdiction against the person or party who committed the material violation; however, if the person or party obtains the required building permits and any local government or public agency with authority to enforce the Florida Building Code approves the plans, if the construction project passes all required inspections under the code, and if there is no personal injury or damage to property other than the property that is the subject of the permits, plans, and inspections, this section does not apply unless the person or party knew or should have known that the material violation existed. For purposes of this section, the term "material violation" means a Florida Building Code violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems.

Section 3. The amendments to s. 95.11(3)(c), Florida Statutes, made by this act apply to any action commenced on or after the effective date of this act, regardless of when the cause of action accrued, except that any action that would not have been barred under s. 95.11(3)(c), Florida Statutes, before

the amendments made by this act must be commenced on or before July 1, 2024. If the action is not commenced by July 1, 2024, and is barred by the amendments to s. 95.11(3)(c), Florida Statutes, made by this act, then the action is barred.

Section 4. This act shall take effect upon becoming a law.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

CS/HB 85 by Rep. Snyder
Causes of Action Based on Improvements to Real Property

AMENDMENT SUMMARY
February 7, 2023

Amendment 1 by Rep. Snyder (line 22):

- Removes a trigger for starting the timeline for the statute of limitations, and
- Removes a definition.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Reform & Economic Development Subcommittee
Representative Snyder offered the following:

Amendment

Remove lines 22-70 and insert:

(3) WITHIN FOUR YEARS.—

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from ~~the date of actual possession by the owner,~~ the date the authority having jurisdiction issues ~~of the issuance of~~ a temporary certificate of occupancy, a certificate of occupancy, a certificate of completion, or the date of abandonment of construction if not completed, ~~or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or~~

~~licensed contractor and his or her employer,~~ whichever date is earliest ~~latest~~; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 7 ~~10~~ years after the date ~~of actual possession by the owner, the date of the issuance of~~ the authority having jurisdiction issues a temporary certificate of occupancy, a certificate of occupancy, or a certificate of completion, or the date of abandonment of construction if not completed, whichever date is earliest ~~the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest~~. However, counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred. With respect to actions founded on the design, planning, or construction of an improvement to real property, if such construction is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final temporary certificate

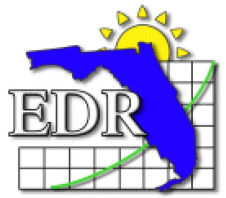
of occupancy, certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time within which an action must be commenced. ~~Completion of the contract means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.~~ Notwithstanding any provision of this section to the

Florida Office of Economic
and Demographic Research

Florida Gaming and the Lottery: Economics, Status and Impact

February 7, 2023

Presented by:



The Florida Legislature
Office of Economic and
Demographic Research
850.487.1402
http://edr.state.fl.us

Basic Tax Base --- Simplistic Form

Handle - **Prizes** = **Net Win**

The total sum wagered or bet by participating gamblers on any particular race or game is known as the handle. This is the initial source of all non-investment revenue.

The amount returned to the class of participating gamblers in the form of winnings.

The amount initially retained by the gambling provider. Represents the loss to the entire class of gamblers and is sometimes called "Gross Gaming Revenue" or GGR.



Taxes, Revenue Sharing, Expenses (which can include licenses) and **Profits** *usually come out of Net Win, although taxes may be calculated against the handle. Cardroom gross receipts are a special case.*

Taxes can also be levied more directly against patrons in the form of admissions taxes.

Underlying Economic Premises...

- The money for gambling expenditures comes from somewhere; it is not created:
  - *Recreational budget from discretionary income that could be spent on other items.*
  - *Savings or other investments.*
  - *For problem gamblers, dollars essential to subsistence.*

- Some or all of the jobs, wages and tax revenues attributed to gambling enterprises may be simply transferred from elsewhere. In other words, if the money was spent elsewhere in Florida, it would also generate jobs, wages and potential tax revenues from that expenditure.
  - *Moving activity from one place to another is simply churn without overall statewide gain.*
  - *For jobs, a statewide increase only exists to the extent that the individuals are otherwise unemployable or they are moving in from outside the state to take the jobs*

- In terms of the economy, there are different economic effects based on the type of gambler. Generally:
  - *Residents in the normal course of daily activity—displacement (-) or neutral (=).*
  - *Tourists who would have come to Florida regardless—displacement (-) or neutral (=).*
  - *Residents who would have otherwise left the state to gamble—removal of a leakage (+).*
  - *Tourists coming into the state to gamble who otherwise would not have—new revenue (+).*

  The various gaming alternatives will have different mixes of gamblers.

Secondary Premises...

- The specific location of new facilities matters. Pari-mutuel facilities with slot machines typically draw on their nearby market area (i.e., the local resident population).
- A local economic gain doesn't necessarily translate into a statewide gain. Activity may be pulled from another area of the state.
- It makes a difference where equipment and supplies are purchased (in-state or out-of-state).
- It matters where the profits go (in-state or out-of-state).
- Financed capital investment for infrastructure is initially positive as the dollars are infused, but later becomes a drain as repayments of the principal and interest remove dollars.

Key Economic Consideration...

- Cannibalization—creating demand for one product at the expense of another; substitution of one purchase for another. It can be detected through:
  - The shifting among state revenue sources when the gambling product is a substitute purchase replacing the purchase of another good which would have been taxed in a different manner. (+ or – depending on the difference in tax rates)
  - The shifting among gambling products that are substitutes for each other. (+ or - depending on the difference in tax rates)
  - The shifting between a nontaxable purchase to a taxed gambling product. (+)

Activity Nested at Tribal Facilities...

- After multiple attempts, the Governor and the Seminole Tribe of Florida executed an agreement on April 7, 2010, that was ratified by the Legislature by Chapter 2010-29, L.O.F., and approved by the United States Secretary of the Interior.

- The 2010 Compact had a term of 20 years, which began the first day of the month following the publication of the notice of approval in the Federal Register (July 6, 2010), making it effective August 1, 2010. Based on this, the expiration date would have been July 31, 2030. An exception was made to the general expiration for certain named banking or banked card games (including baccarat, chemin de fer, and blackjack, but excluding roulette, craps, roulette-styled games, and craps-styled games); this specific authorization was set to expire after five years.

- The 2010 Compact authorized play of covered games at seven Seminole tribal gaming facilities. The games included slot machines at all seven facilities and banked card games at five of the seven facilities. In FY 2021-22, slots were present in six of the seven facilities: Broward (2 sites), Hillsborough, Collier, Glades and Hendry counties.

- As part of this authorization, the Tribe was granted partial but substantial exclusivity for both the play of banked card games and the operation of slots in counties other than Broward and Miami-Dade. In exchange, the Tribe agreed to a revenue sharing arrangement with the State.

- The General Revenue Fund received 100 percent of the revenue share; however, 3 percent was subsequently distributed to the affected local governments.

2010 Indian Gaming Compact...

- The Compact provided that once the authorization for banked card games expired, revenue share payments from all banked card games and all Broward activity would cease. It also provided that the Tribe had 90 days, referred to as a grace period, to cease the operation of banked card games. The authorization for banked card games expired on July 31, 2015, and the grace period ended October 31, 2015.

- Beginning in November 2015 and running through July 2017, revenue sharing associated with banked card games was not included in the state's official revenue forecasts. The Revenue Estimating Conference met in August 2017 where it took two actions that affected the treatment of past and future receipts. First, based on the Settlement Agreement and Stipulation entered into between the Seminole Tribe of Florida and the State of Florida in July 2017, the payments associated with banked card games that the state had held in reserve ($233.8 million) since November 2015 were released. Second, all future revenue share payments, including those formerly placed in reserve, were treated as nonrecurring revenues because continuation of these payments depended on actions by the State and the Seminole Tribe that could not be anticipated with sufficient certainty. In this regard, the Settlement Agreement and Stipulation required that "...the state takes aggressive enforcement action against the continued operation of banked card games, including Designated Player Games that are operated in a banked game manner..." during a specified Forbearance Period. The original Forbearance Period ended March 31, 2018; however, an amendment to the Settlement Agreement was signed on April 18, 2018, effectively extending the Forbearance Period to May 31, 2019.

- After making its April 2019 payment, the Tribe ceased all revenue sharing with the State. The Revenue Estimating Conference met in July 2019 where it zeroed out the revenue forecast for the 2010 Compact.

2021 Indian Gaming Compact...

- The Governor and the Seminole Tribe of Florida signed a new Compact on April 23, 2021, with an amendment on May 17, 2021. It was subsequently ratified in Special Session by CS/SB 2-A, which was approved by the Governor on May 25, 2021. Most importantly, the 2021 Compact authorized sports betting, to begin no earlier than October 15, 2021.

- On August 11, 2021, the Department of Interior, Bureau of Indian Affairs, published a notice entitled “Indian Gaming; Approval by Operation of Law of Tribal-State Class III Gaming Compact in the State of Florida” in the Federal Register. This notice officially triggered the first revenue sharing cycle under the terms of the new Compact beginning on September 1, 2021. By operation, the 2010 Compact was superseded.

- In addition to the previously authorized games, the 2021 Compact authorizes craps & roulette, sports betting, and fantasy sports contests. It also establishes a new bracket structure for revenue sharing based on the different components of Net Win: Slot Machines, Raffles and Drawings + New Games; Table Games (including craps & roulette); Sports Betting – Tribe (direct); and Sports Betting – Qualified Pari-mutuel Permitholders. The new Compact also includes a schedule of guaranteed minimum payments that applied to the first five revenue sharing cycles.

2021 Indian Gaming Compact Continued...

- The State of Florida began receiving Indian Gaming payments under the 2021 Compact in October of 2021.

- The U.S. District Court for the District of Columbia set aside federal approval of the 2021 Compact on November 22, 2021.
  - Currently, the case is being appealed. The United States Court of Appeals for the D.C. Circuit held the Oral Argument on December 14, 2022.

- Other than sports betting, craps and roulette, Indian Gaming activity continues to take place.

- While the Seminole Tribe of Florida had elected to continue revenue sharing with the State of Florida after the ruling, it subsequently discontinued those payments in March 2022. It is currently unknown when or if these payments will resume into state accounts. Therefore, revenue sharing will only become relevant again if or when the 2021 Compact is reinstated. At this time, however, the Revenue Estimating Conference projects that there will be no collections from Indian Gaming within the next five years.

- Formerly, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, had administered the Compact. As of July 1, 2022, the State Compliance Agency became the Florida Gaming Control Commission.

Historical Indian Gaming Receipts (GR)

	Total Received	Total Received in GR by Year	Reserve within GR (not separately escrowed)	Total Excluding Banked Card Game Receipts held in Reserve by Year	Release of Reserve (not Escrow)	Total after Release of Bank Card Game Receipts held in Reserve by Year	Local Distribution by Year	
FY 2007/08	60,416,667	-		-		-	-	
FY 2008/09	77,083,333	-		-		-	-	
FY 2009/10*	150,000,000	287,500,000		287,500,000		287,500,000	-	2007 Compact
FY 2010/11**	140,416,667	140,416,667	-	140,416,667	-	140,416,667	750,000	
FY 2011/12	150,000,000	150,000,000	-	150,000,000	-	150,000,000	3,750,000	
FY 2012/13	226,083,337	226,083,337	-	226,083,337	-	226,083,337	4,500,000	
FY 2013/14	237,312,301	237,312,301	-	237,312,301	-	237,312,301	6,990,000	
FY 2014/15	255,610,619	255,610,619	-	255,610,619	-	255,610,619	7,119,369	
FY 2015/16	272,840,413	272,840,413	57,500,000	215,340,413	-	215,340,413	7,670,819	
FY 2016/17	288,840,354	288,840,354	166,540,354	122,300,000	-	122,300,000	6,300,000	
FY 2017/18***	341,803,426	341,803,426	9,800,000	332,003,426	233,840,354	565,843,780	10,550,424	
FY 2018/19	257,994,274	257,994,274	-	257,994,274	-	257,994,274	10,254,103	2010 Compact
FY 2019/20	-	-	-	-	-	-	7,154,828	*(lagged distribution)*
FY 2020/21	-	-	-	-	-	-	-	
Total	**2,458,401,391**	**2,458,401,391**	**233,840,354**	**2,224,561,037**	**233,840,354**	**2,458,401,391**	**65,039,543**	

* Formally "escrowed" amount released and shown in GR by CFO's office in June 2010.

** The total amount received in FY 2010-11 includes $2,916,666.67 that is associated with a final payment from the 2007 Compact. It was received in December 2010. Payments under the 2010 Compact began in August 2010, although it recognized some actions that occurred prior to its effective date.

*** The Reserve was released in August 2017, and thereafter separate catch-up payments were made to local distributions to reflect their share of the Reserve ($7,019,

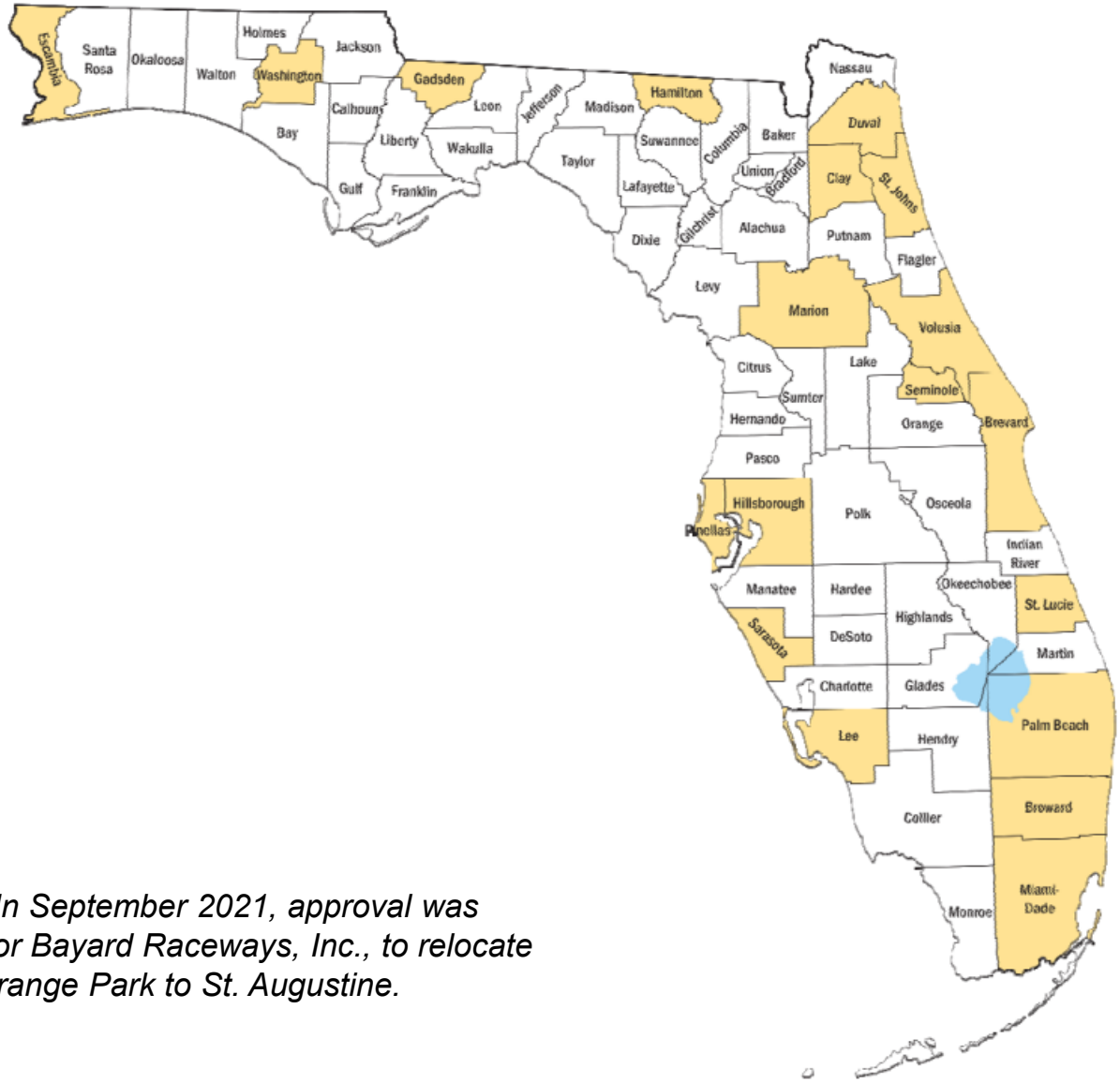
As of January 2022, expected fiscal year payments from the 2021 Compact were: (millions)

FY 2021/22	337.5
FY 2022/23	463.5
FY 2023/24	481.4
FY 2024/25	498.8
FY 2025/26	516.2
FY 2026/27	533.1

For the 2021 Compact, payments were received for only five months: October 2021 through February 2022 (millions):

FY 2021/22	187.5	55.6%

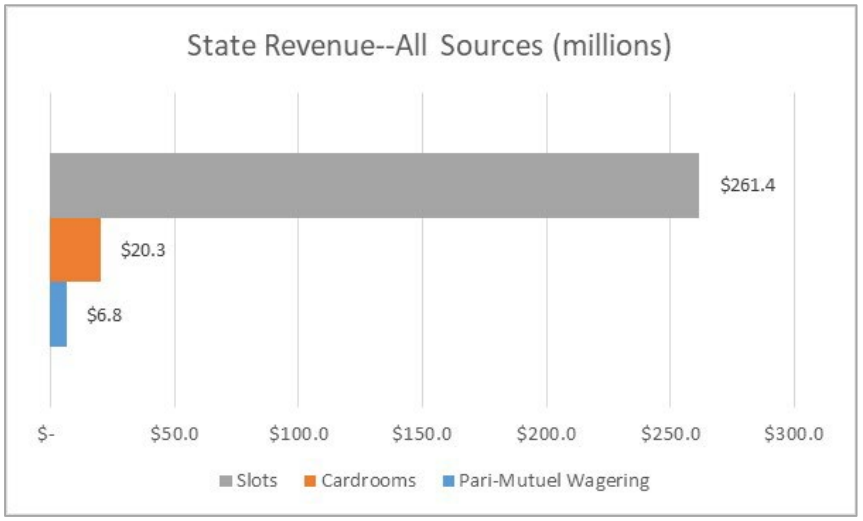
Counties With Active Pari-Mutuel Permits



Note: In September 2021, approval was given for Bayard Raceways, Inc., to relocate from Orange Park to St. Augustine.

Activity Nested at Pari-Mutuel Facilities...

FY 2021-22...All Sources	State Revenue	Share
Pari-Mutuel Wagering	$ 6.8	2.3%
Cardrooms	$ 20.3	7.0%
Slots	$ 261.4	90.6%
TOTAL	$ 288.5	100.0%



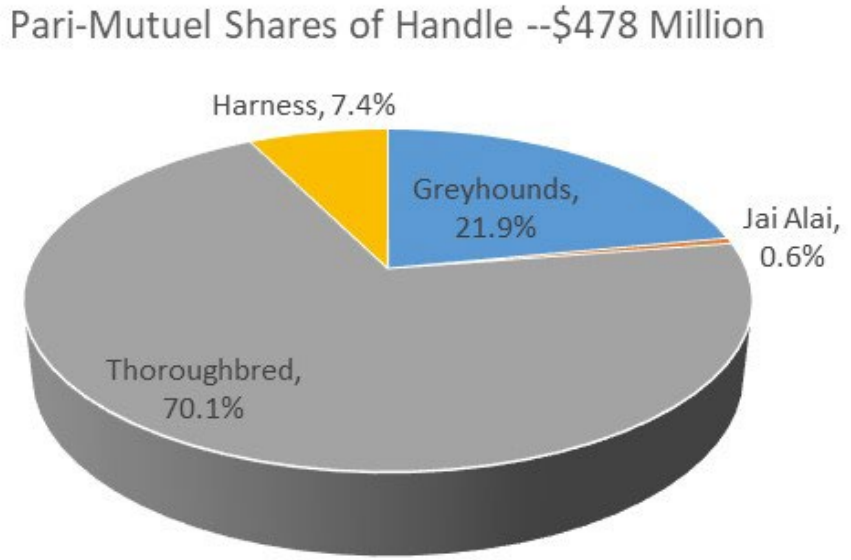
- In FY 2021-22, there were 38 permitholders in 29 discrete locations throughout the state authorized to conduct traditional **pari-mutuel wagering**. The industry operated 721 racing and gaming days for thoroughbred horses, harness horses, and jai alai; none were held for quarterhorse racing.
- **Cardrooms** are generally authorized for licensed pari-mutual facilities throughout Florida, but were only operated at 24 facilities in FY 2021-22.
- **Slot machine gaming** was operating at 8 pari-mutuel facilities in Broward and Miami-Dade counties in FY 2021-22.
- During FY 2021-22, a total of $288.5 million in state revenues was collected from pari-mutuel activities, cardrooms, slot machine gaming, and their associated licenses, fees and fines.

Pari-Mutuel Wagering...

The pari-mutuel handle comes from the following types of wagering: live on-track; simulcast (out-of-state); intertrack (Florida); and intertrack simulcast (rebroadcast). No activity was related to quarter horse racing in 2021-22.

Pari-mutuel wagering has a complex revenue structure that includes occupational licenses, daily license fees, taxes on admission, taxes on handle, tax credits and tax exemptions, but totaled approximately 1.41% of the handle in FY 2021-22.

Of the $6.8 million in state revenue, $5.9 million (87%) was related to performances, and $0.9 million was related to licenses, etc.



PARI-MUTUEL HANDLE AND STATE REVENUE SUMMARY

Fiscal Year	Number of Racing/Gaming Days	Total Paid Attendance	Total Pari-Mutuel Handle	Total State Revenue (1)	State Revenue as a Percent of Handle
2012/2013	3,628	430,707	$ 872,272,660	$13,200,709	1.51%
2013/2014	3,582	383,864	$ 850,136,735	$13,785,681	1.62%
2014/2015	3,441	377,660	$ 779,336,136	$12,589,460	1.62%
2015/2016	3,416	348,081	$ 740,622,948	$11,832,484	1.60%
2016/2017	3,415	333,620	$ 717,555,785	$10,926,426	1.52%
2017/2018	3,149	318,621	$ 688,030,290	$8,519,787	1.24%
2018/2019	2,742	203,219	$ 653,757,703	$9,478,392	1.45%
2019/2020	2,176	132,243	$ 452,660,865	$6,673,808	1.47%
2020/2021	1,288	35,861	$ 449,239,684	$7,224,825	1.61%
2021/2022	721	57,988	$ 477,966,334	$6,751,163	1.41%

Source: Florida Gaming Control Commission, Annual Report for Fiscal Year 2021-2022

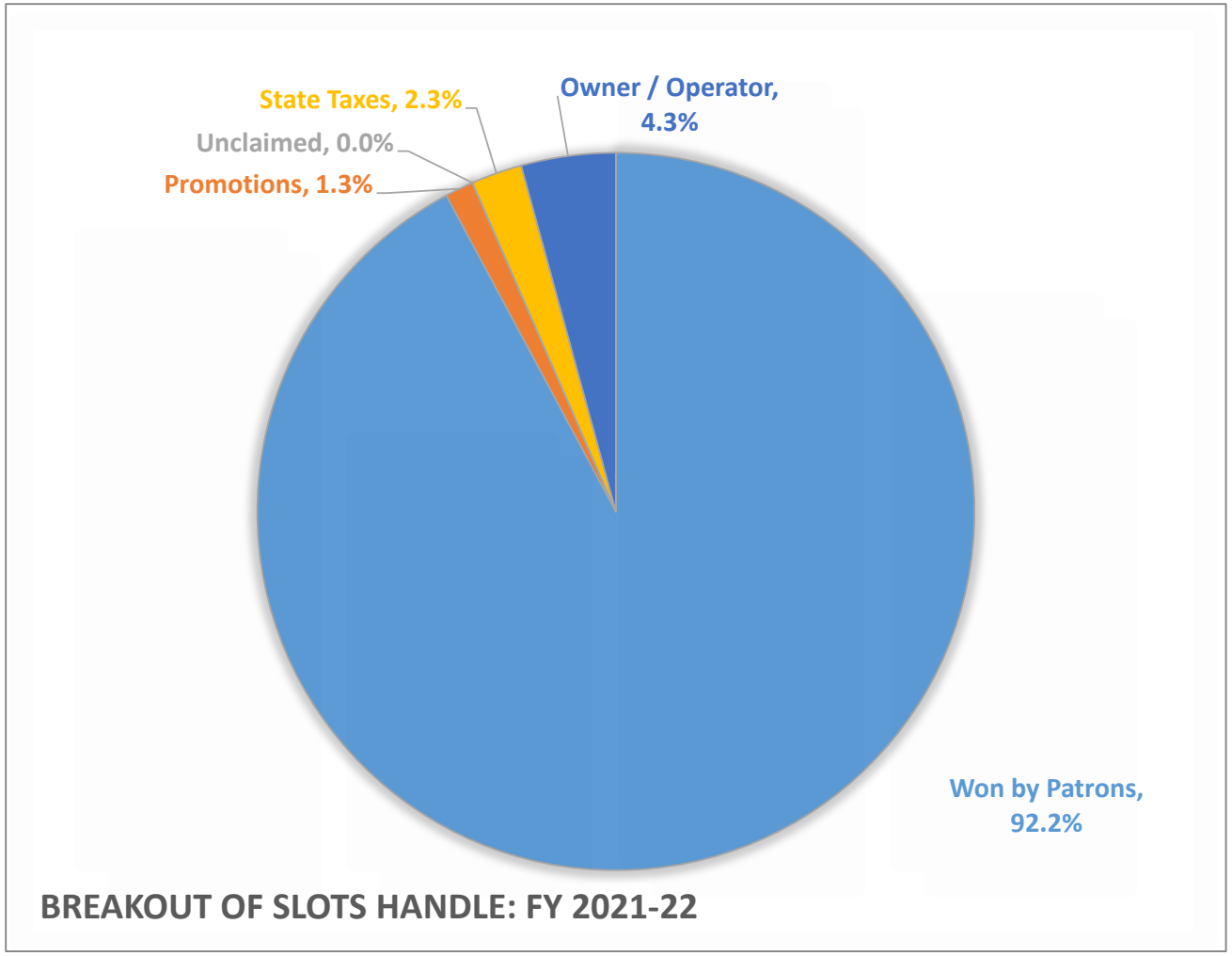
Cardrooms...

- There were 829 cardroom tables in operation in FY 2021-22.
- The core tax structure is based on table fees ($1000 per table) and gross receipts taxes (10% of the monthly gross receipts), with additional revenue from occupational licenses. One-half of the cardroom taxes goes to the General Revenue Fund, and one-quarter of the moneys deposited in the Pari-Mutuel Wagering Trust Fund is distributed to the counties and municipalities that approved the cardroom.
- Of the $20.3 million in total state revenue, $20.1 million (99%) was related to Table Fees and Taxes on Gross Receipts, and $0.1 million was related to licenses, etc.

CARDROOM GROSS RECEIPTS AND STATE REVENUE SUMMARY

Fiscal Year	Total Cardroom Gross Receipts	Gross Receipts Tax	Table Fees Collected [(A)]	Total State Revenue (Gross Receipts Tax plus Table Fees)	Total State Revenue as a Percent of Gross Receipts
2012/2013	$132,690,415	$13,269,045	$810,000	$14,079,045	10.61%
2013/2014	$136,163,616	$13,615,464	$788,000	$14,403,464	10.58%
2014/2015	$135,888,902	$13,589,789	$755,000	$14,344,789	10.56%
2015/2016	$147,298,438	$14,729,654	$774,000	$15,503,654	10.53%
2016/2017	$156,914,074	$15,692,825	$805,000	$16,497,825	10.51%
2017/2018	$167,950,581	$16,795,063	$786,000	$17,587,063	10.47%
2018/2019	$172,085,233	$17,208,523	$824,000	$18,032,523	10.48%
2019/2020	$132,392,085	$13,239,209	$796,000	$14,035,209	10.60%
2020/2021	$151,179,359	$15,117,936	$782,000	$15,899,936	10.52%
2021/2022	$193,312,344	$19,331,234	$829,000	$20,160,234	10.43%

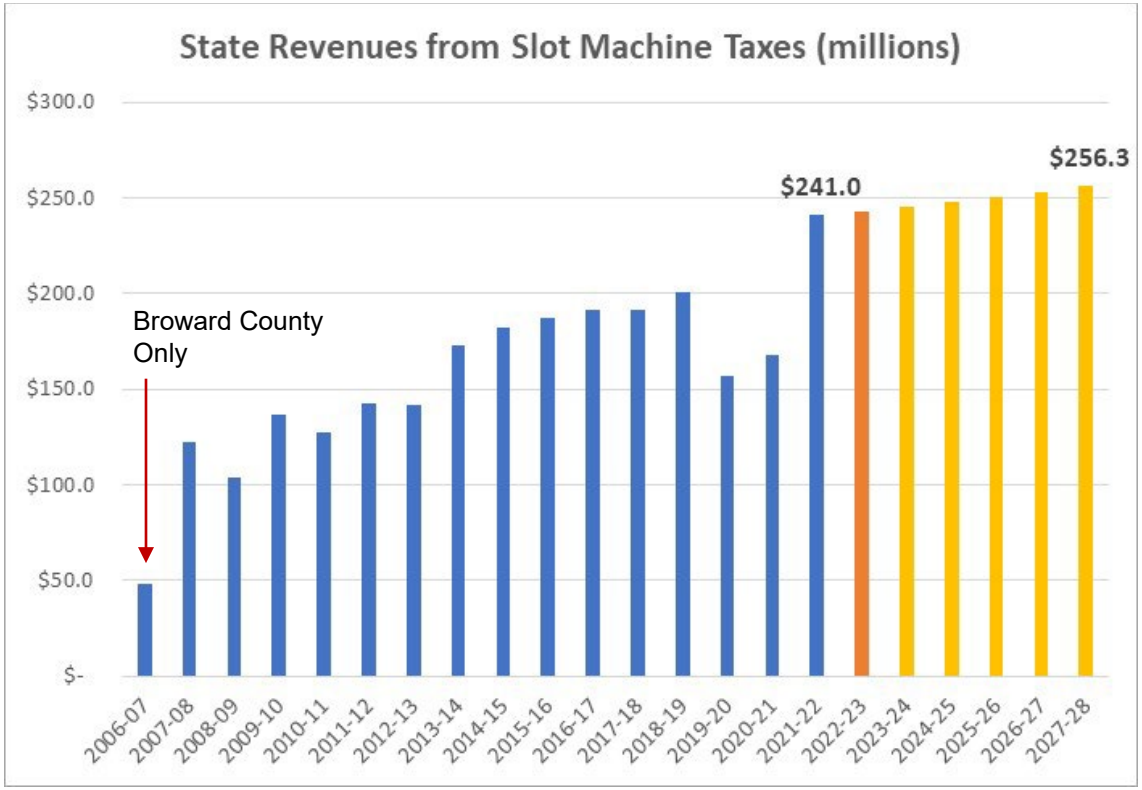
Source: Florida Gaming Control Commission, Annual Report for Fiscal Year 2021-2022



EDR Estimate of Amount Wagered in FY 2021-22 (billions)

9.692	Won by Patrons	92.2%
0.135	Promotions	1.3%
0.001	Unclaimed	0.0%
0.241	State Taxes (Official)	2.3%
0.448	Owner / Operator	4.3%
10.516	Amount Wagered	100.0%

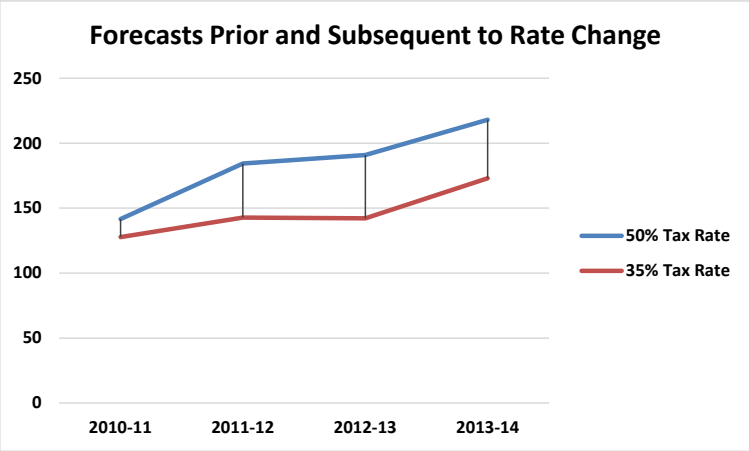
Net Win or
Net Slot Machine Revenue
= 6.6%



One-hundred percent of slot machine tax collections go to the Educational Enhancement Trust Fund. The slot machine tax rate was 50% in FY 2006-07 through FY 2009-10, and was reduced to 35% beginning in Fiscal Year 2010-11. The state switched from weekly to monthly collections of slot machine taxes in FY 2012-13, which causes the FY 2012-13 revenues to appear artificially low. In addition to the tax receipts of $241 million, revenues from several fees (Compulsive / Addictive Gambling; facility and occupational licenses) brought total state revenues to $261.4 million.

Tax Rate Change...

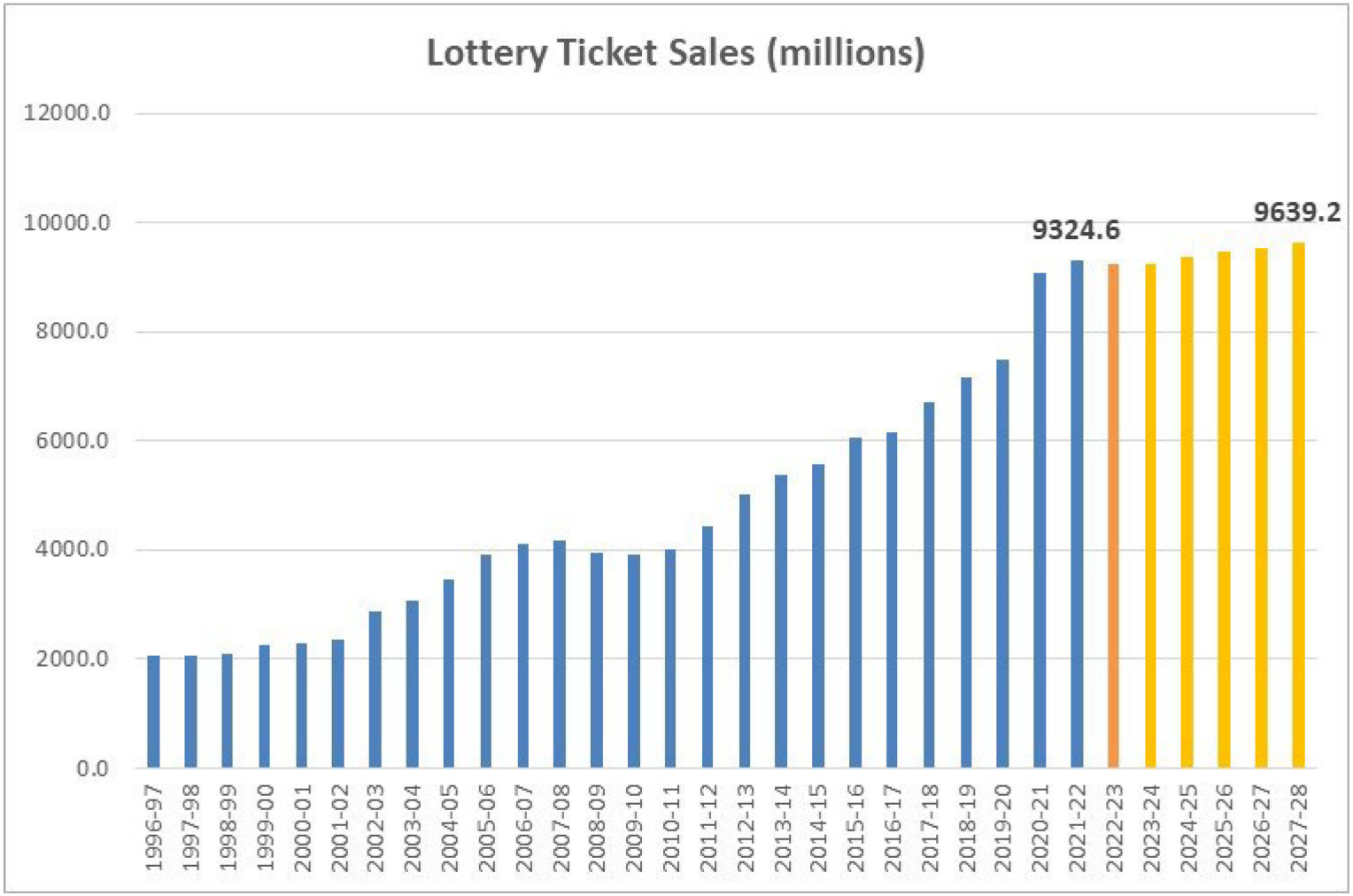
During the 2010 Session, CS/SB 622 (Ch. 2010-29, LOF) passed which reduced the slots tax rate from 50% to 35% effective July 1, 2010. The Revenue Estimating Conference developed a new methodology to evaluate the change, assuming a non-recurring loss for three years and then a break-even point in the 4th year (meaning tax receipts at 35% in FY 2013-14 would equal the prior forecast for that year at 50%).



The underlying assumption was that activity would increase to the point where the rate change was revenue neutral by the fourth year—due to greater capital investments, promotions and prizes. Overall, net income would have had to increase by 43% for the change to have been revenue neutral. It did not.

Tax	Feb-10	Impact Rate Chg	Other Changes	Post-Session '10	Actual	Difference
2006-07	48.2	0.0	0.0	48.2	48.2	
2007-08	122.3	0.0	0.0	122.3	122.3	
2008-09	104.4	0.0	-0.3	104.1	104.1	
2009-10	129.6	0.0	0.0	129.6	136.4	
2010-11	166.7	-25.0	0.0	141.7	127.7	-14.0
2011-12	189.4	-14.2	9.1	184.3	142.7	-41.6
2012-13	193.8	-8.7	5.9	191.0	142.2	-48.8
2013-14	199.0	0.0	19.1	218.1	173.1	-45.0

Activity Nested Statewide...

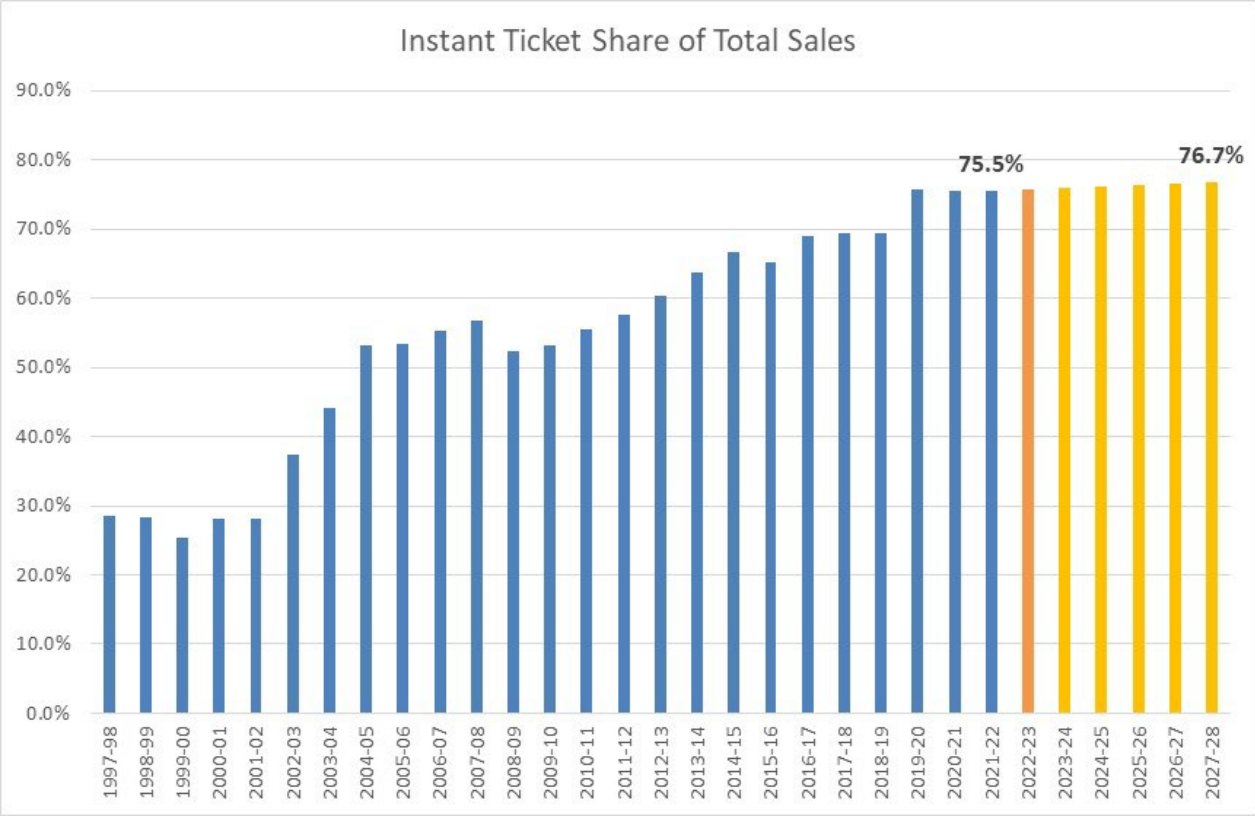


The Florida Lottery is a special case of gaming since the state is also the operator.

Florida Lottery...

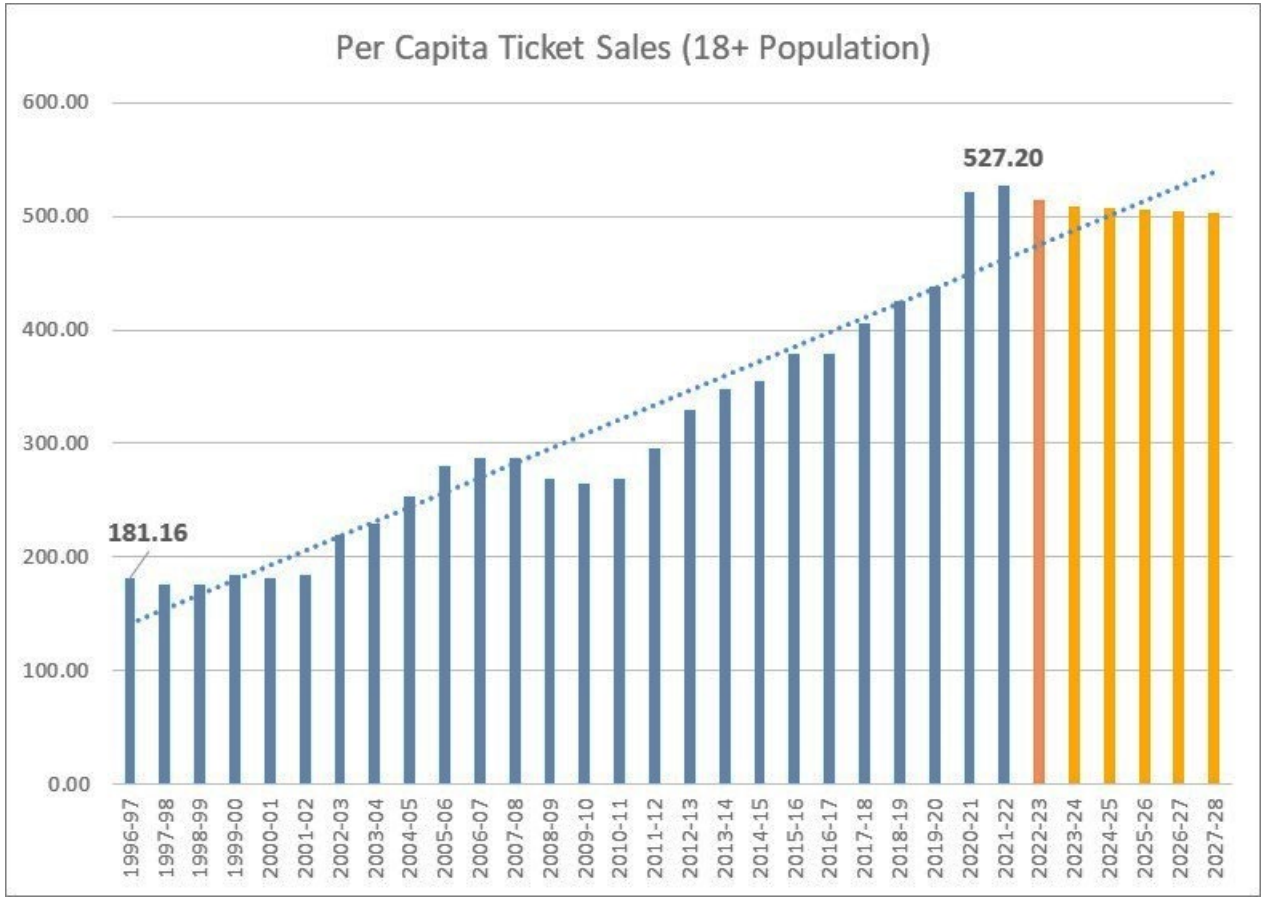
EDR's Analysis of FY 2021-22 Lottery Financial Report...

Handle	Prizes	Net System Costs	EEFT Total
9324.6	6245.5	745.7	2333.5
	67.0%	8.0%	25.0%



The Florida Lottery's "handle" in FY 2021-22 was $9.32 billion. From the collective players' perspective, the effective loss on their expenditure was 33.0 percent.

The share to EETF varies by the type of game: after transfers for prizes, fees, admin costs, and unclaimed prizes, net transfers to the EETF equal approximately 38.10% of terminal game ticket sales and 18.48% of scratch-off ticket sales. The share of total ticket sales arising from instant games has significantly increased over time.



- Per capita Lottery ticket sales have increased dramatically, while the number of retailers has stayed relatively stable (13,461 in 2022). Both the trend line and the inflation-adjusted level for FY 1996-97 ($320.13) suggest that the 2021-22 experience of $527.20 is remarkable.

- According to the Department of Lottery the largest segments of players in 2022 were male (52%), aged 55+ (39%), and college-educated (44%), with incomes of $70,000 or more per year (39%).

Across All Forms of Gaming...

FY 2021-22...Handle & Net Win*	Handle (All Wagering)	Share	Per Capita (18+)	Estimated Net Win
Indian Gaming	$ 20,047,200,000	49.4%	$ 1,133.44	$ 2,505,900,000
Pari-Mutuel Wagering	$ 477,966,334	1.2%	$ 27.02	$ 31,545,778
Cardrooms	$ 193,312,344	0.5%	$ 10.93	$ 30,929,975
Slots	$ 10,515,608,040	25.9%	$ 594.54	$ 689,341,437
Lottery	$ 9,324,628,000	23.0%	$ 527.20	$ 3,079,173,000
TOTAL	$ 40,558,714,718	100.0%	$ 2,293.14	$ 6,336,890,190

*EDR projections. Indian Gaming was based on the 2010 Compact, prior to sports betting. In some cases, Net Win is adjusted to reflect current law.

Florida Gaming
Control Commission

Florida Gaming Control Commission

HOUSE SUBCOMMITTEE ON REGULATORY REFORM & ECONOMIC DEVELOPMENT

FEBRUARY 7, 2023

LOUIS TROMBETTA, EXECUTIVE DIRECTOR

Mission:

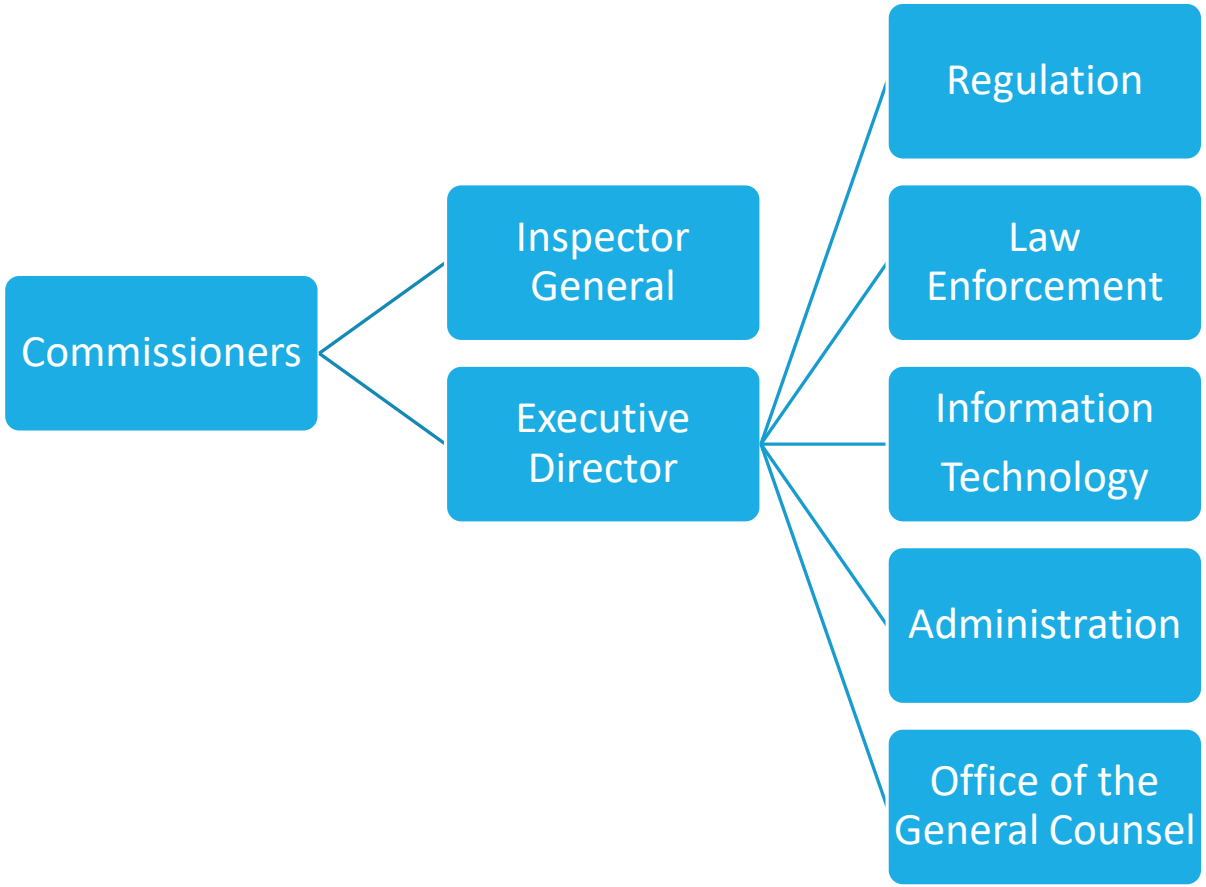
Preserve and protect the integrity of gaming activities through fair regulation, licensing, effective criminal investigation, and enforcement

- **Overview**:
  - Created during 2021 Legislative Special Session
  - Five-Member Commission

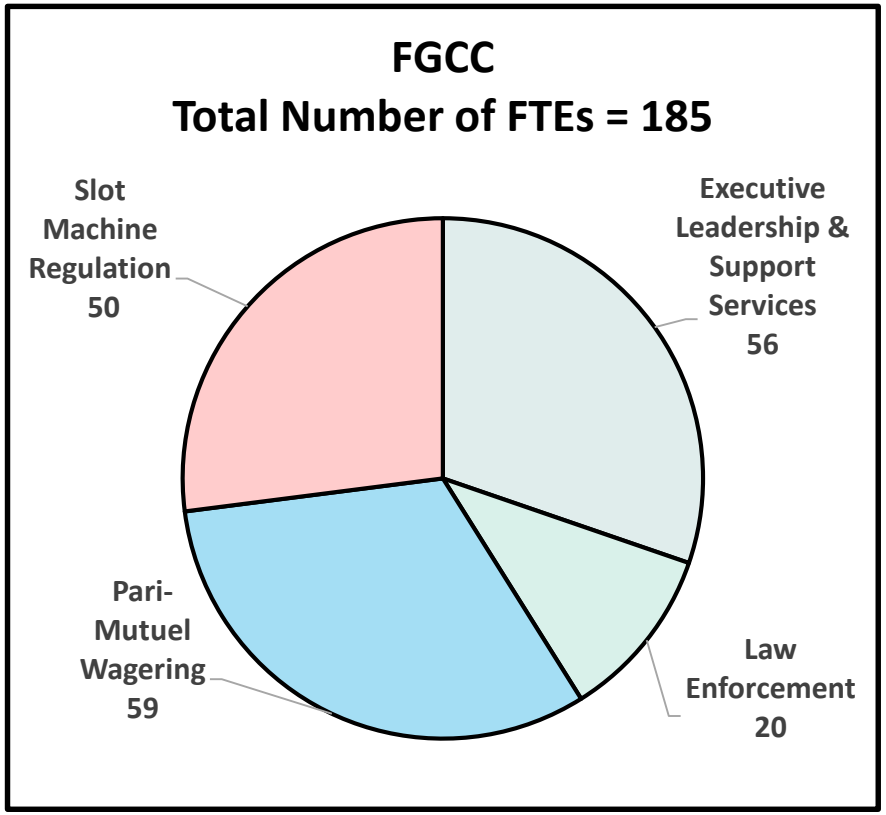
- **Goals**:
  - Provide efficient regulation of licensed activity.
  - Investigate, support, and provide information to oppose criminal gambling elements in the State of Florida.
  - Protect the health and safety of Floridians.
  - Secure state revenues.

- **Duties** - Exercises all regulatory and enforcement powers in:
  - Licensed Pari-Mutuel Activities:
    - Horseracing
    - Jai Alai
    - Cardrooms
    - Slot Machine Gaming
  - Oversight of Gaming Compacts
  - Criminal Gambling Prohibitions

Organizational Structure



FGCC 22/23 Budget: $27,708,426

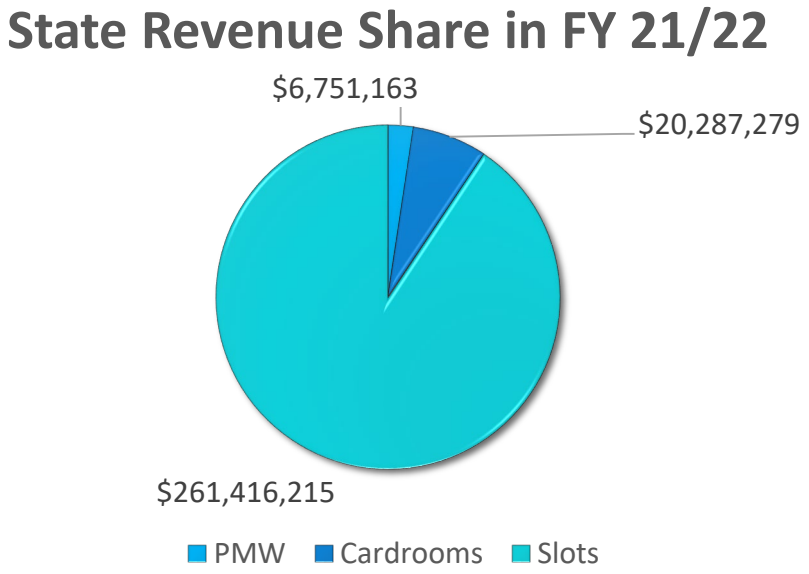


The Commission

- Located within the Attorney General's Office
- Led by 5 commissioners serving together as the agency head
  - 1 with law enforcement background
  - 1 legal background
  - 1 accounting background
- Commissioners hold meetings and take final agency action as needed.
  - Over 90 Final Order issues since July 1, 2022
  - Oversee the FGCC's two subject matter Divisions – (1)Regulation and (2)Law Enforcement

Regulation: The Division of Pari-Mutuel Wagering

- The Division of Pari-Mutuel Wagering conducts all the regulated activities of the commission.
- Formerly a Division within DBPR, on July 1, 2022, the Division of Pari-Mutuel Wagering moved from DBPR into the FGCC.
- There are several regulated gaming activities in the state:
  - Horse racing,
  - Jai-alai,
  - Cardrooms, and
  - Slot machines.
- Main Duties include:
  - Issuance of licenses – individuals and businesses
  - Compliance investigations
  - Animal safety
  - Gaming integrity
  - Revenue accounting and collection
  - Compact oversight.



Law Enforcement

- The FGCC also oversees a Division of Law enforcement with authority throughout the state to take action to enforce the state's criminal gambling prohibitions.

- FGCC Law Enforcement has prioritized communicating, collaborating, and working with the Law Enforcement Community.

- The Law Enforcement Division has already succeeded by:
  - Working with local municipalities to prevent ordinances from going into effect which would have attempted to allow local licensing of potentially illegal devices.
  - Responding to complaints about illegal gambling throughout the state.
  - Providing resources to local law enforcement

Support Divisions: Administration, IT, and OGC

The FGCC's regulatory and law enforcement divisions are supported by an IT, Admin and OGC team.

- Administration:
  - The Division of Administration provides all the support in the areas of finance, accounting, budget, HR, Contract Services, Travel and other related administrative areas. Administration is working to implement agency wide policies and procedures, secure new office space for our main Tallahassee office and our satellite law enforcement agents.
- Information Technology:
  - The IT team supports all of the FGCC's technical needs. As the FGCC is a combination of new systems and a former division of DBPR, IT is responsible for both establishing new systems and migrating the old documents and systems over from DBPR. The IT team is currently working to help move the FGCC onto an independent network, separate from DBPR, while upgrading our systems and maintaining additional security features for our law enforcement agents.
- Office of General Counsel:
  - The FGCC also has a team of in-house attorneys that provide most of the legal work for the commission. The OGC provides a range of support from general legal counsel for the commission, regulatory action, law enforcement, and administration.

Additional Information

Statistics: https://fgcc.fl.gov/pmw/statistics/

Annual Reports: https://fgcc.fl.gov/pmw/annual-reports/

Report illegal gambling: https://fgcc.fl.gov/file-a-complaint/

Contact us: https://fgcc.fl.gov/contact/

Florida Lottery

THE FLORIDA LOTTERY

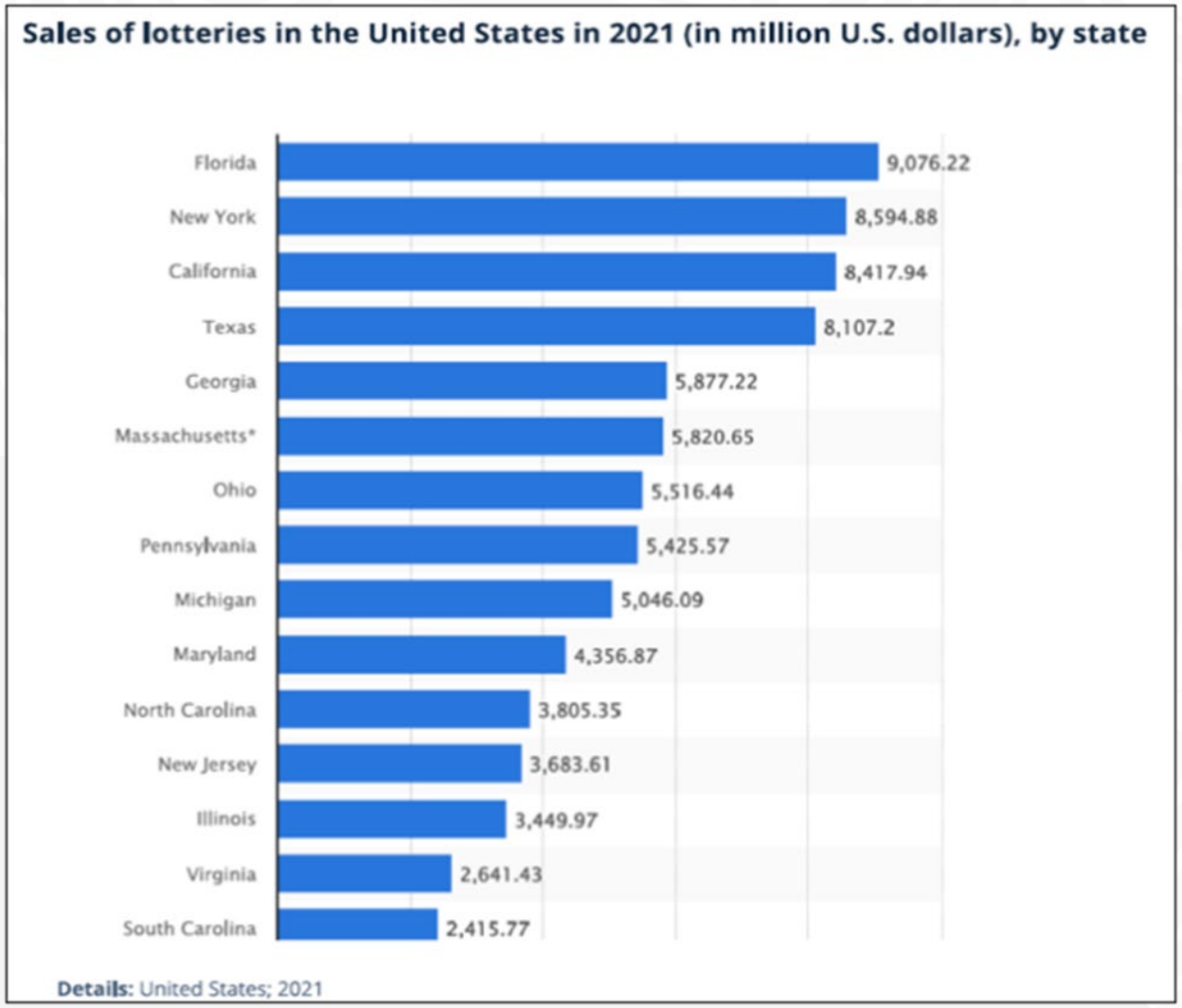
House Regulatory Reform and Economic Development Subcommittee

Feb 7, 2023

MISSION:

- Enhance education in Florida by maximizing transfers to the Educational Enhancement Trust Fund (EETF)

- Operate as much as possible as a business enterprise



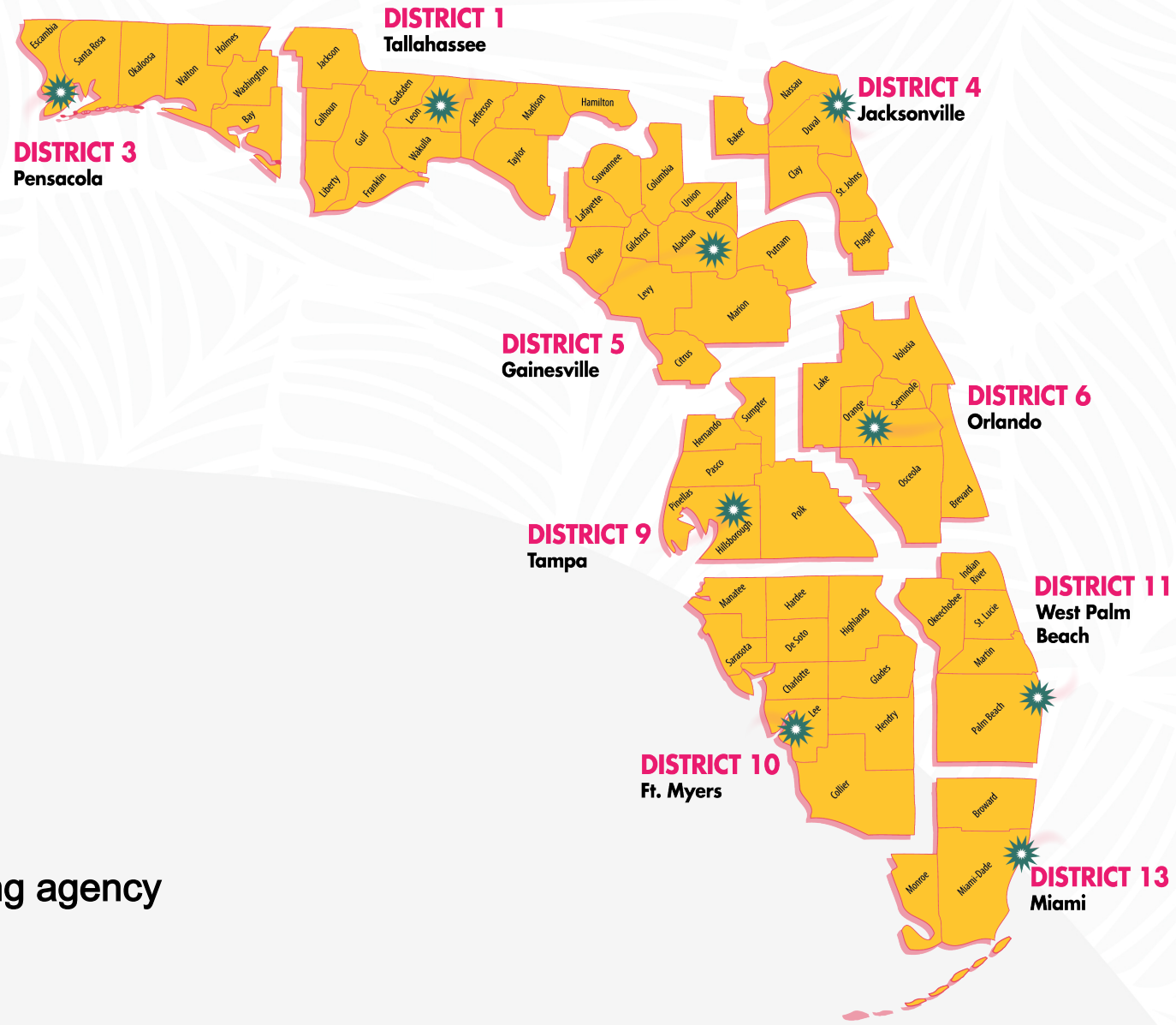
The Lottery's Greatest Asset:

LOTTERY EMPLOYEES

- Best games in the country
- Respect / leadership in the industry
- Superior brand recognition
- Exceptionally talented group

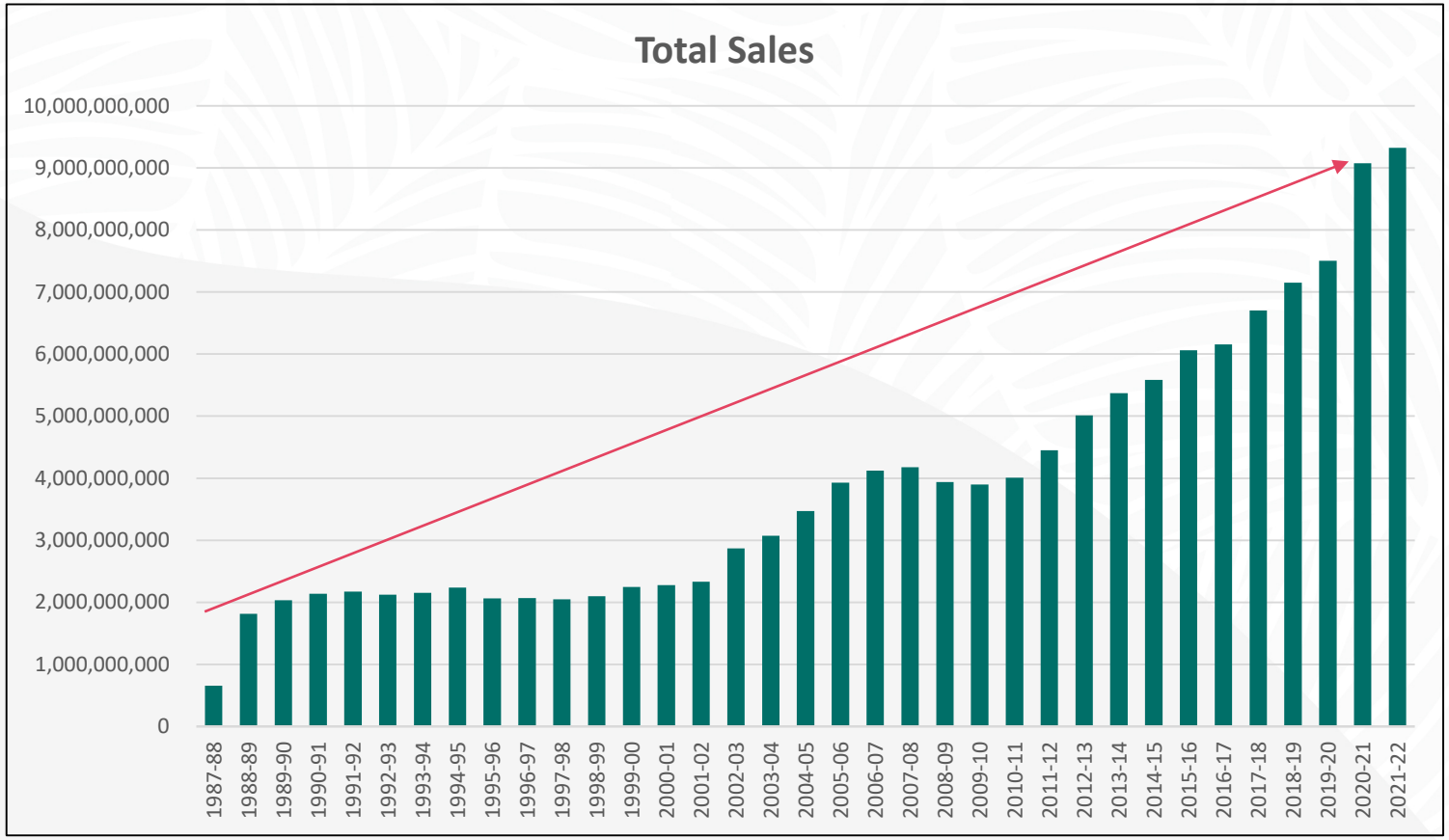
THE FLORIDA LOTTERY

- Established in 1986 by the Constitutional Amendment approved by Florida's voters
- First scratch -off ticket was sold in 1988
- 418.5 FTE
- 9 District Offices
- Revenue -generating and self -supporting agency



Ticket Sales Continue to Increase

- Number #1 Lottery in U.S. in ticket sales
- $9 Billion+ ticket sales over the past 2 Fiscal Years
- Steady increase year -over -year for the past decade



Best Games Available



FLORIDA MEGA MILLIONS with MEGAPLIER

JACKPOT TRIPLE PLAY with COMBO

PICK 2 3 4 5 PLUS FIREBALL

FLORIDA POWERBALL DOUBLE PLAY POWERPLAY

CASH POP

GROUPER

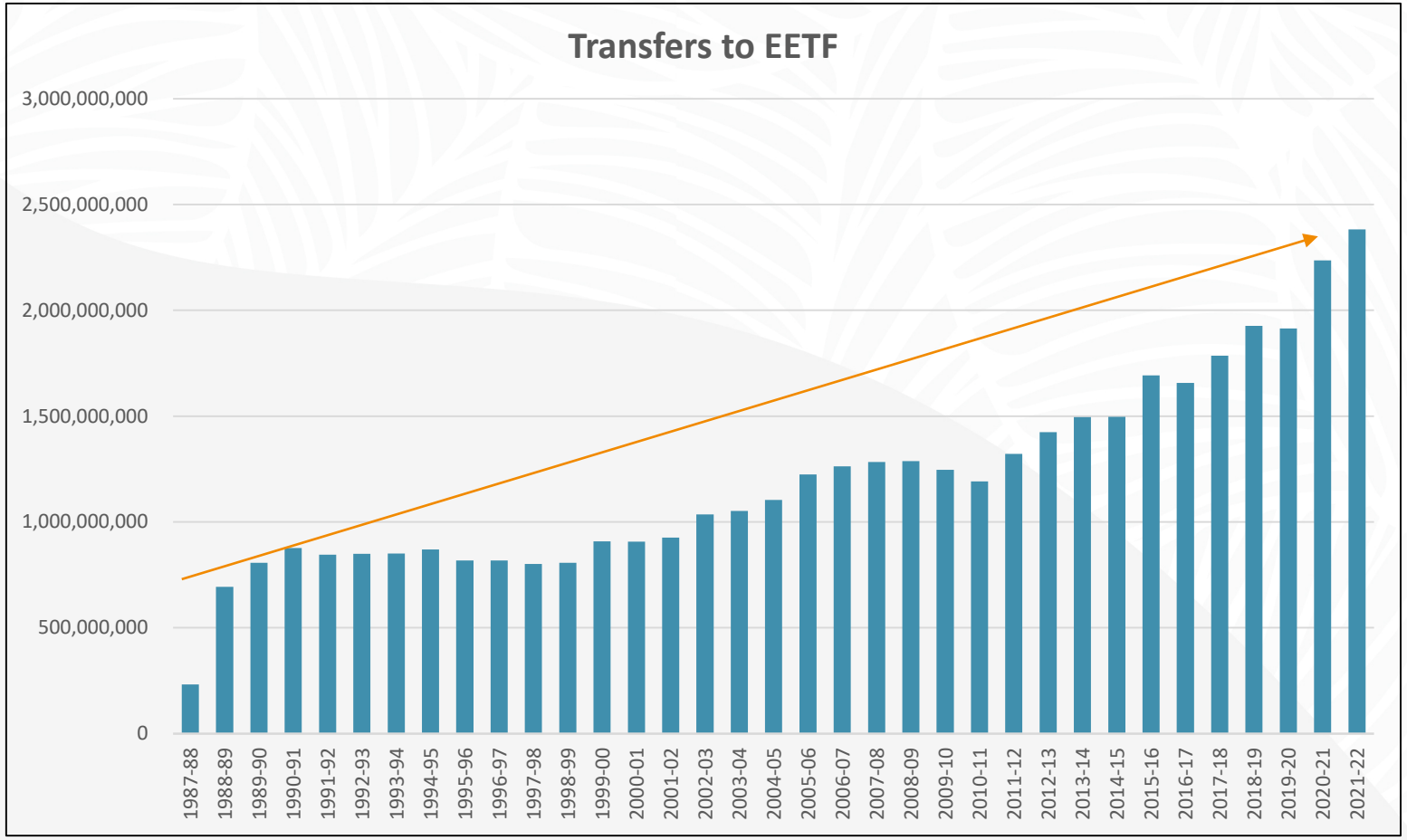
FLORIDA LOTTO X with Double Play

FANTASY 5 with ezmatch

FLORIDA LOTTERY CASH 4LIFE

Support for Post -Secondary Education

- $1 Billion+ to education over the past 21 consecutive Fiscal Years
- $2 Billion+ to education over the past 2 consecutive Fiscal Years
- $43 Billion+ to education since start -up



Creating Brighter Futures for Students and Families

950,000+ BRIGHT FUTURES

Nearly one million students have attended college in Florida with Bright Futures scholarships.



Creating Winning Partnerships

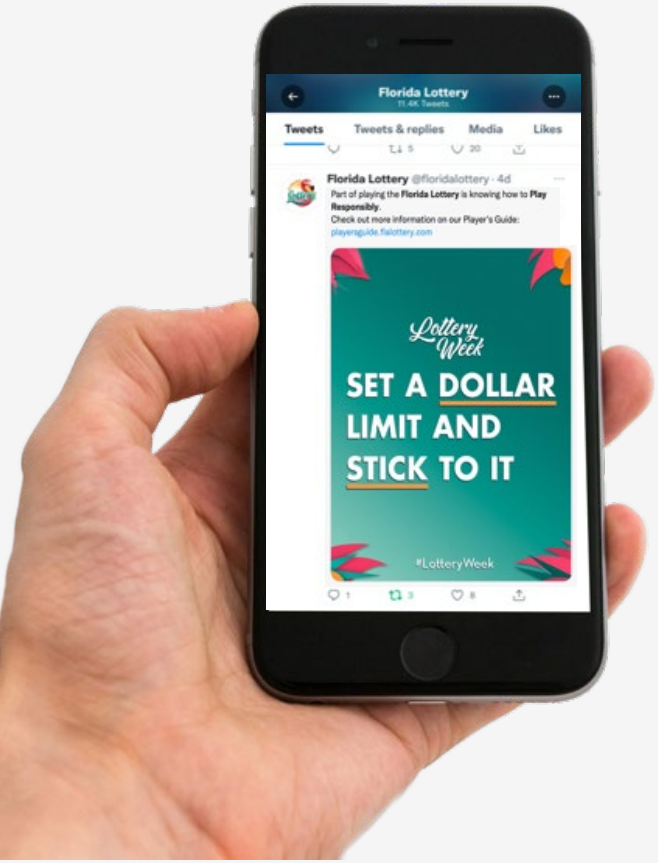
13,449 Retailers



Community Outreach and Partnerships



Play Responsibly



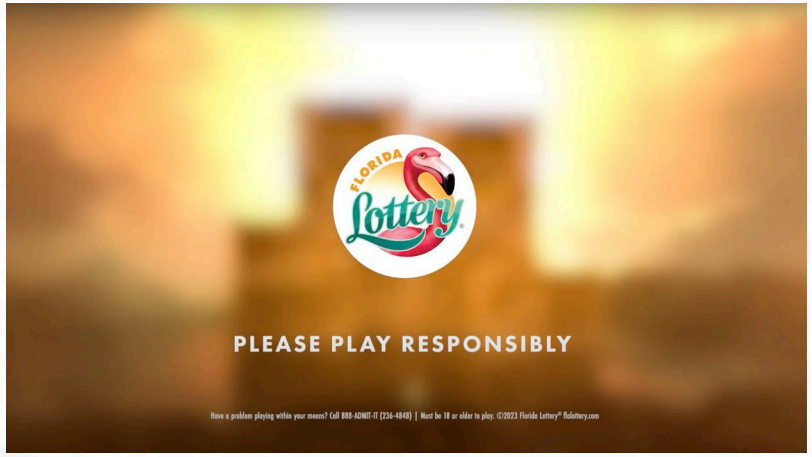
Digital banners on external website







TV Spot



Digital billboards



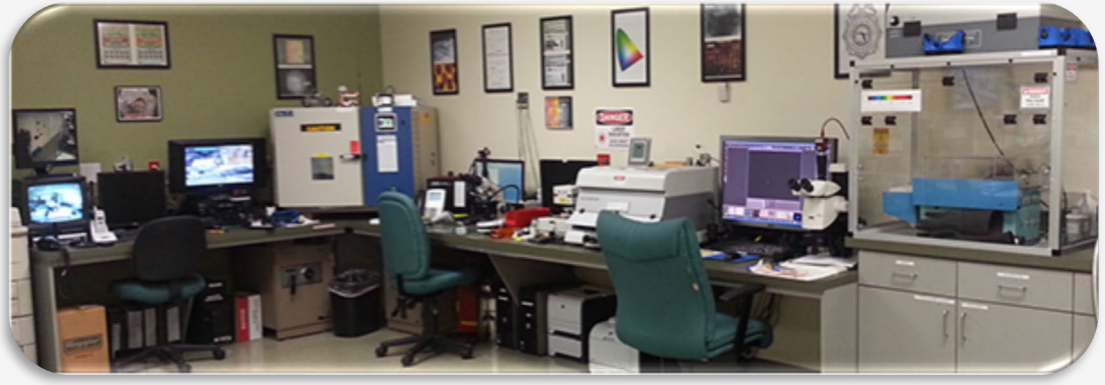
Division of Security

- An accredited, fully authorized law enforcement agency that protects the integrity of the Florida Lottery and ensures the statutory responsibilities in Chapter 24, Florida Statutes are upheld.

- The Division employs 27 full -time staff and 9 OPS employees in nine district offices across the state.

Division of Security

- Background Investigations
- Criminal Investigations
- Draw Management
- Emergency Management
- Facilities Security
- Forensic Laboratory
- Intelligence Services
- Safety Services





Lottery Integrity

Retailer Compliance Operations & Inspections

- Proactive, unannounced visits to Lottery retailers as a part of the Retailer Integrity Program
- Undercover compliance operations based on random selection, complaints, and suspected illicit activity

Forensic Investigations

- Agents conduct scientific analysis of tickets using advanced technology in the forensic lab
- Analysis can lead to players receiving their winnings

Lottery Integrity

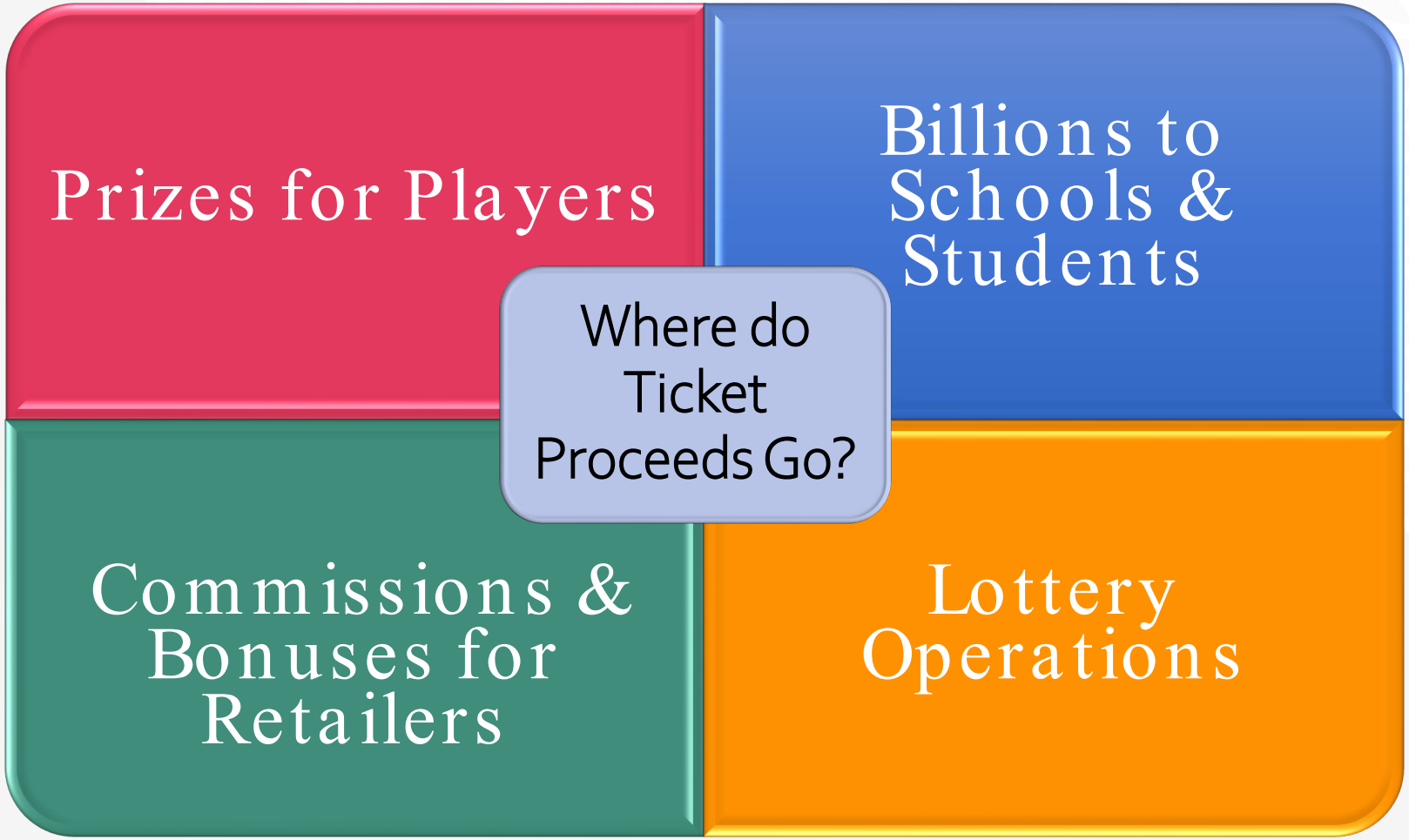
Criminal Investigations

- Done in conjunction with local and state law enforcement partners
- Can result in arrests

Background Investigations & Intelligence

- Background investigations are conducted on all retailers, as well as Lottery employees and vendors
- Intelligence staff review lost and stolen tickets

Floridians Always Win



QUESTIONS?

THANK YOU!
FROM THE FLORIDA LOTTERY