

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SPB 7072

INTRODUCER: Regulated Industries Committee

SUBJECT: Gaming

DATE: February 22, 2016

REVISED: \_\_\_\_\_

ANALYST  
Kraemer/Oxamendi

STAFF DIRECTOR  
Caldwell

REFERENCE  
\_\_\_\_\_

ACTION  
**RI Submitted as Committee Bill**

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**I. Summary:**

SPB 7072 revises gaming laws, including ch. 24, F.S., on State Lotteries, ch. 550, F.S., on Pari-mutuel Wagering, ch. 551, F.S., on Slot Machines, and s. 849.086, F.S. authorized cardrooms.

The bill revises ch. 24, F.S., regarding State Lotteries to allow limited use of “point-of-sale terminals” for the sale of lottery tickets or games. The bill authorizes the Department of the Lottery (department), approved vendors, and approved retailers to use point-of-sale terminals to facilitate sales of lottery tickets or games, provided that the purchaser is verified to be at least 18 years of age. A point-of-sale terminal may not reveal winning numbers, dispense lottery winnings, or be used to redeem a winning ticket. The department is required to adopt rules that limit the dollar amount of lottery tickets purchased, create a process to enable a customer to restrict or prevent his or her own access to lottery tickets or games, and ensure that the program does not breach the exclusivity provisions of any Indian gaming compact to which the state is a party. (See Lines 248-518.)

The bill revises ch. 550, F.S., regarding Pari-mutuel Wagering to allow a greyhound racing permitholder, jai alai permitholder, harness racing permitholder, and quarter horse racing permitholder to determine, on an annual basis, whether it will offer live racing or games at its pari-mutuel facility, but continue to operate its cardroom or slot machine facility. Ending the requirement for the offering of live racing or games but continuing to offer slot machines or cardrooms is known as “decoupling.”

The bill prohibits the issuance of new pari-mutuel permits after July 1, 2016, and relocation of permits is no longer allowed. All inactive (dormant) pari-mutuel permits are revoked. The division must also revoke any permit to conduct pari-mutuel wagering if a permitholder has not conducted live events within the 24 months preceding the effective date of the bill, excluding certain limited thoroughbred racing permits. A permit that is revoked for failure to conduct live events within the 24 months preceding the effective date of the bill may not be reissued. (See Lines 519-827.)

The bill reduces the tax rate on slot machine revenue to 25 percent from 35 percent. (*See* Lines 2291-2292.) The bill reduces the tax payable on handle by greyhound racing permitholders from 5.5 percent to 1.28%. The bill deletes tax exemptions available to greyhound racing permitholders of \$360,000 or \$500,000, and deletes the authorization that allows transfers of tax exemptions or other credits among greyhound permitholders with the approval of the division. The bill deletes the breaks tax payable by greyhound racing permitholders. (*See* Lines 918-1107.)

The number of hours that a slot machine gaming area may be open on weekdays is extended, from 18 hours to 24 hours, which matches the operating hours on weekends. Complimentary alcoholic beverages may be served to slot machine players. The bill provides that a slot machine licensee may allow automatic teller machines (ATMs) or similar devices designed to provide credit or dispense cash, to be located in the gaming area of a slot machine facility. (*See* Lines 2336-2356.)

The bill provides that a designated player game is not a banking game, and that a designated player is the player in the dealer position who pays winning players and collects from losing players. The bill defines a designated player game to mean “a game in which the players compare their cards only to the cards of the designated player or to a combination of cards held by the designated player and cards common and available for play by all players.” (*See* 2382-2420.)

All cardroom operators may offer designated player games. A cardroom operator may not serve as a designated player, but may collect a rake as posted at the table. When there are multiple designated players at a table, the dealer button must be rotated clockwise after each hand. A designated player may not pay an opposing player who holds a lower ranked hand.

The bill defines a designated player game as a banking game if certain elements exist, such as a requirement that a designated player cover all wagers posted by opposing players, the dealer button is not offered for rotation, the cardroom or other licensee receives compensation above the posted fee from any player to serve as a designated player; or if the designated player is required to pay the wager of an opposing player with a lower ranked hand. (*See* Lines 2513-2546.)

The bill establishes a permit reduction program, in which the division is authorized to purchase and cancel active pari-mutuel permits. Funding for the program, which may not exceed \$20 million, is generated by revenue share payments made by the Seminole Tribe of Florida after October 31, 2015. The division must cancel a permit purchased through the program. This provision expires July 1, 2018, unless reenacted. (*See* Lines 1398-1435.)

The bill establishes a thoroughbred purse supplement program, effective July 1, 2018. The program is created to maintain an active and viable live thoroughbred racing, owning, and breeding industry in Florida. Funding for the program is generated by revenue share payments made by the Seminole Tribe of Florida under the Gaming Compact and received by the State after July 1, 2018. The funding for the purse supplement program is \$20 million annually. (*See* Lines 1436-1489.)

The bill requires greyhound track veterinarians to prepare and sign detailed reports under oath, on a form adopted by the division of all injuries to racing greyhounds that occur while the greyhounds are on a racetrack. If an injury occurs at a location other than a racetrack or during transport, then the injury report must be prepared and signed under oath by a greyhound owner, trainer, or kennel operator who has knowledge of the injury. The requirement to report injuries to racing greyhounds does not apply to injuries to a service animal, personal pet, or greyhound that has been adopted as a pet.

Reporting is required within 7 days after the date the injury occurred or is believed to have occurred. The reports are public records that must be maintained for 7 years by the division. False statements in an injury report or the failure to report an injury subjects licensees of the department to disciplinary action under pari-mutuel, regulatory, and professional practice laws. (See Lines 1490-1543.)

The bill revises criteria relating to relocation of permits between counties, intertrack wagering, simulcast wagering, and limited intertrack wagering. (See Lines 1544-1893.)

The bill redefines the term “eligible facility” to specify the facilities that are eligible to conduct slot machine gaming as the seven pari-mutuel facilities in Miami-Dade and Broward that existed when the State Constitution was amended and slot machines in the county were approved by referendum, and any licensed pari-mutuel facility, if slot machines in the county are approved by voters in a countywide referendum, and if the facility conducted a full schedule of live racing for 2 consecutive years immediately preceding its application. (See Lines 1894-1945.)

The bill disqualifies permitholders from receiving a slot machine license, if a permitholder includes, or previously included, an ultimate equitable owner whose permit was voluntarily or involuntarily surrendered, suspended, or revoked in the 10 years before the application for a slot machine license. (See Lines 1946-1964.)

It appears the bill revises criteria for all slot machine licenses, by deleting the requirement that live racing be conducted by a pari-mutuel permitholder in order to maintain eligibility for the slot machine license. The bill also allows a permit to be relocated, with the live racing conducted at a leased facility of a limited thoroughbred permitholder. The bill allows relocation of the permit without a referendum. (See Lines 1965-1982 and Lines 1659-1666.)

Any slot machine licensee (which includes greyhound racing permitholders, jai alai permitholders, harness racing permitholders, and quarter horse racing permitholders) that is not running a full schedule of live racing under its pari-mutuel permit must contribute to a thoroughbred purse pool, which remains effective through July 1, 2036. The purse pool is for the benefit of slot machine licensees that conduct at least 160 days of live thoroughbred racing. There is a dollar-for-dollar credit for payments made to a horsemen’s association under a binding written agreement. The requirement for a thoroughbred racing permitholder to have a horsemen’s agreement governing the payment of purses on live racing does not apply to a summer thoroughbred racing permitholder. (See Lines 1983-2019.)

The bill deletes the requirement that a quarter horse racing permitholder must have a horsemen’s agreement governing the payment of purses on live quarter horse races. (See Lines 2020-2032.)

The bill allows issuance of an additional slot machine license in a county as defined in s. 125.011, F.S., for the purpose of enhancing live pari-mutuel activity. Any pari-mutuel permitholder in that county that is not a slot machine licensee may apply for the license, upon payment of a \$2 million nonrefundable application fee. If there is more than one applicant, the license will be awarded by the division to the applicant that receives the highest score based on specified criteria. The bill does not specify the relative value or points that are attributable to the selection criteria.

The division must complete its evaluations at least 120 days after the submission of applications and notice its intent to award the license within that time. The time frames in the Administrative Procedure Act do not apply. Any protest of the intent to award the license will be heard by the Division of Administrative Hearings, and any appeal of a license denial must be made to the First District Court of Appeal. The division is authorized to adopt emergency rules, based on a legislative finding that such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to benefit the public. The division is exempted from existing law requiring publication in writing at the time of, or prior to, its action, the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare, and its reasons for concluding that the procedure used is fair under the circumstances. The emergency rules may be effective for longer than 90 days and may be renewed. The bill provides the emergency rules will remain in effect until replaced by other emergency rules or by rules adopted pursuant to the Administrative Procedure Act. (*See Lines 2127-2242.*)

The bill authorizes house banked blackjack table games, with a maximum of 25 such tables at each facility, at eight facilities in Miami-Dade and Broward counties where the operation of slot machines is authorized. (*See Lines 2242-2262.*)

The bill also expands the hours a cardroom may be operated to 24 hours daily, (previously 8 hours Monday through Friday and 24 hours on Saturday and Sunday), which conforms to the hours that a slot machine gaming area may be open. (*See Lines 2489-2494.*)

The bill provides that the provisions of the bill are not severable; if the bill or any of its provisions are determined to be unconstitutional, or the applicability thereof to any person or circumstance is held invalid, all provisions or applications of the bill are invalid, and the bill is considered never to have become law. (*See Lines 2646-2652.*)

The bill states the requirements for SPB 7072 to become effective. Sections 1, 2, and 3 of the bill respecting point-of-sale terminals are effective upon SPB 7072 becoming law. (*See Lines 248, 280, and 298.*) The bill requires the enactment of SPB 7074, respecting the Gaming Compact between the Seminole Tribe of Florida and the State of Florida, or similar legislation ratifying the Gaming Compact between the Seminole Tribe of Florida and the State of Florida executed by the Governor and the Seminole Tribe of Florida on December 7, 2015 (the Gaming Compact). (*See Lines 2653-2660.*)

In addition, the bill requires approval of the Gaming Compact by the United States Department of the Interior (Department of the Interior) as required under the Indian Gaming Regulatory Act of 1988. With the exclusion of Sections 1, 2, and 3 of the bill, which are effective upon the SPB

becoming law, the remaining provisions of SPB 7072 will be effective upon the date of publication of approval of the Gaming Compact by the Department of the Interior in the Federal Register. (See Lines 2658-2664.)

## II. Present Situation:

### The Florida Lottery

Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of the Florida Constitution,<sup>1</sup> are prohibited in Florida by s. 7, Art. X of the State Constitution. However, s. 15 of Article X of the State Constitution (1968) allows lotteries to be operated by the state. Section 24.102(2), F.S., provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
- The department shall be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the state lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens,”<sup>2</sup> for the benefit of public education.<sup>3</sup> The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.<sup>4</sup> Retailers receive commissions of five percent of the ticket price, one percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments.<sup>5</sup> Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.<sup>6</sup>

The department selects retailers based on financial responsibility, integrity, reputation, accessibility, convenience, security of the location, and estimated sales volume, with special consideration for small businesses.<sup>7</sup> Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. There is a general prohibition against contracting with a retailer with a felony criminal history.<sup>8</sup> The authority to act as a retailer for lottery sales may not be transferred.<sup>9</sup> Retailer contracts may be suspended or terminated for: (1) violating lottery laws and regulations; (2) committing any act that undermines public confidence in the lottery; (3) improper accounting for lottery tickets, revenues, or prizes; or (4) insufficient

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<sup>1</sup> The Constitution of the State of Florida was revised in 1968 and ratified by the electorate on November 5, 1968. See Preamble to the Constitution of the State of Florida.

<sup>2</sup> See s. 24.104, F.S.

<sup>3</sup> See s. 24.121(2), F.S.

<sup>4</sup> See s. 24.105(17), F.S.

<sup>5</sup> See *Lottery Transfers Have Recovered; Options Remain to Enhance Transfers*, Report No. 14-06, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, (January 2014), (hereinafter referred to as *OPPAGA Report 14-06*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> at page 2 (last accessed Feb. 19, 2016).

<sup>6</sup> See *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Increase Efficiency*, Report No. 15-03, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, (January 2015), (hereinafter referred to as *OPPAGA Report 15-03*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last accessed Feb. 19, 2016), at page 1 (footnote 3).

<sup>7</sup> See Section 24.112(2), F.S., which also includes a statement of legislative intent that retailer selections be based on business considerations and public convenience, without regard to political affiliation.

<sup>8</sup> Section 24.112(3)(c), F.S.

<sup>9</sup> Section 24.112(4), F.S.

ticket sales. Every retailer contract must provide for a payment of liquidated damages for any contract breach by the retailer.<sup>10</sup>

Retailers may not extend credit or lend money to a person to purchase a lottery ticket, however, this prohibition does not include the use of a credit or charge card or other instrument issued by a bank, savings association, credit union, charge card company, or by a retailer (for installment sales of goods), provided that the lottery ticket purchase is in addition to the purchase of other goods and services with a cost of not less than \$20.<sup>11</sup>

Section 24.115, F.S., authorizes the department to establish by rule a system to verify and pay winning lottery tickets:<sup>12</sup>

- Any lottery retailer, as well as any lottery department office, may redeem a winning ticket valued at less than \$600.<sup>13</sup> Payments less than \$50 are generally paid by a retailer in cash, depending on store policy or local ordinance. Higher amounts may be paid by cash, check, or money order at no cost to the winner.
- Only a lottery department office may redeem a winning ticket valued at \$600 or more.<sup>14</sup> Winning tickets are paid at the claimant's option in a combination of cash, check, or lottery tickets (with a limitation of \$200 payable in cash).

Prizes must be claimed within certain time limits, depending on the type of game played. Instant lottery tickets (e.g., scratch-off tickets), must be redeemed within 60 days after the end of that lottery game.<sup>15</sup> Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the drawing or the end of the lottery game in which the prize was won.

If a valid claim is not timely made, 80 percent of the unclaimed prize amount is deposited in the Educational Enhancement Trust Fund,<sup>16</sup> and the remainder may be used for future prizes or special prize promotions.<sup>17</sup>

Section 24.105(9)(a), F.S., authorizes the department to adopt rules governing the types of lottery games to be conducted, including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”<sup>18</sup>

<sup>10</sup> Section 24.112(10), F.S.

<sup>11</sup> Section 24.118(1), F.S.

<sup>12</sup> See Rule 53ER13-31, F.A.C.

<sup>13</sup> The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the nine lottery district offices, or to lottery headquarters in Tallahassee.

<sup>14</sup> Mega Millions® and Powerball® prizes up to \$1 million may be claimed at any lottery district office. All other prizes greater than \$250,000 must be claimed at lottery headquarters.

<sup>15</sup> See s. 24.115(1)(f), F.S.

<sup>16</sup> Section 24.115(2)(a), F.S., provides that such funds may be used, subject to legislative appropriation, to match private contributions received under specified post-secondary matching grant programs.

<sup>17</sup> See s. 24.115(2)(b), F.S.

<sup>18</sup> Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, L.O.F., authorized such machines, subject to restrictions that they be: (1) designed solely for dispensing of instant lottery tickets; (2) activated by coin or currency; (3) in the direct line of sight of on-duty retail employees; (4) capable of being electronically deactivated for 5 minutes or more; and (5) incapable of redeeming winning tickets, though they may dispense change. Chapter 2012-130, Laws of Fla., moved the restrictions on player-activated machines from s. 24.105(9)(a)4., F.S., to s. 24.112(15), F.S. As amended, the law (1) authorizes lottery vending machines to dispense “online lottery tickets, instant lottery tickets, or both,” and (2) prohibits use of mechanical reels or video depictions of slot machine or casino game themes

In November 2013, the department introduced full service vending machines (FSVMs) in retail stores across the state, and has estimated that it earned more than \$29 million from the use of player-activated FSVMs in Fiscal Year 2012-2013.<sup>19</sup> In its most recent Financial Audit,<sup>20</sup> the department stated when 500 FSVMs were installed at its top scratch-off ticket sales locations, allowing both terminal and scratch-off tickets to be sold, total FSVMs sales were over \$248 million.

### The Seminole Gaming Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a compact governing gambling (Gaming Compact) at the Tribe's seven tribal facilities in Florida.<sup>21</sup> The Gaming Compact authorizes the Tribe to conduct Class III gaming.<sup>22</sup> It was ratified by the Legislature, with an effective date of July 6, 2010.<sup>23</sup> The Gaming Compact has a 20-year term.

The Gaming Compact provides that in exchange for the its exclusive right to offer slot machine gaming outside of Miami-Dade and Broward counties and banked card games at five of its seven<sup>24</sup> casinos, the Tribe will make revenue sharing payments to the state. The state's share increases incrementally from 12 percent for the first \$2 billion in annual net win, to 25 percent

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or titles (but does not prohibit use of casino game themes or titles on lottery tickets, signage, or advertising displays on the vending machines).

<sup>19</sup> *OPPAGA Report 14-06*, *supra* note 5, at 2.

<sup>20</sup> See *Financial Audit of the Department of the Lottery, for the Fiscal Years Ended June 30, 2014, and 2013*, Report No. 2015-092, State of Florida Auditor General (January 2015), at page 4 (2015 Financial Audit) at [http://www.myflorida.com/audgen/pages/pdf\\_files/2015-092.pdf](http://www.myflorida.com/audgen/pages/pdf_files/2015-092.pdf) (last accessed Feb. 19, 2016).

<sup>21</sup> The Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida* was approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. See [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last accessed Feb. 19, 2016). Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701, *et seq.*

<sup>22</sup> The Indian Gaming Regulatory Act of 1988 divides gaming into three classes: **Class I** means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations. **Class II** includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo, and certain non-banked card games if not explicitly prohibited by the laws of the state and if played in conformity with state law. **Class III** includes all forms of gaming that are not Class I or Class II, such as house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

<sup>23</sup> See ch. 2010-29, L.O.F.

<sup>24</sup> See the executed Gaming Compact at [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last accessed Feb. 19, 2016). The Gaming Compact provides that banking or banked card games may not be offered at the Brighton or Big Cypress facilities unless and until the state allows any other person or entity to offer those games, as set forth in paragraph F.2. of Part III of the Gaming Compact, at page 4. In addition, in paragraph B of Part XVI, at page 49, the period of authorization to conduct table games is five years. A mediation process is being pursued by the Tribe and Governor Scott on this and other issues. See <http://miami.cbslocal.com/2015/08/25/state-seminoles-headed-into-mediation-over-blackjack/> (last accessed Feb. 19, 2016).

for annual net win greater than \$4.5 billion. In Fiscal Year 2013-2014, the Tribe paid \$237 million.<sup>25</sup>

The Gaming Compact specifically acknowledges operation by the Florida Lottery of the types of lottery games authorized under ch. 24, F.S., on February 1, 2010, and it specifically excludes from such authorized games any “player-activated or operated machine or device other than a Lottery Vending Machine.”<sup>26</sup> The Gaming Compact also includes language about not using a lottery vending machine to redeem winning tickets, which is consistent with similar language in s. 24.112(15)(c), F.S.<sup>27</sup>

The Gaming Compact provides that any expanded gaming (beyond what is specifically acknowledged) relieves the Tribe of its obligations to make substantial revenue sharing payments.<sup>28</sup>

### **Pari-Mutuel Wagering Permitholders**

Generally, in 2014<sup>29</sup> there were 39 pari-mutuel permitholders with operating licenses in Florida, operating at 12 greyhound tracks, six jai alai frontons, five quarter horse tracks, three thoroughbred tracks, and one harness track.<sup>30</sup> One jai alai permitholder voluntarily relinquished its permit in October 2015.<sup>31</sup>

Of the 20 greyhound racing permitholders with operating licenses during 2014-2015, three permitholders conducted races at leased facilities.<sup>32</sup> Five pari-mutuel facilities have two permits

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<sup>25</sup> See the Executive Summary and Conference results from the Revenue Estimating Conference (July 14, 2015 and August 11, 2015) at <http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf> and <http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf> (last accessed Feb. 19, 2016).

<sup>26</sup> In particular, the Gaming Compact acknowledges: “operation by the Florida Department of Lottery of those types of lottery games authorized under chapter 24, Florida Statutes, on February 1, 2010, but not including (i) any player-activated or operated machine or device other than a lottery vending machine or (ii) any banked or banking card or table game.” The Gaming Compact further excludes: (iii) more than ten lottery vending machines at any facility or location or (iv) any lottery vending machine that dispenses electronic instant tickets at any licensed pari-mutuel location. See subparagraph 8 of paragraph B of Part XII of Gaming Compact at page 42. The Gaming Compact describes three types of lottery vending machines, none of which may allow a player to redeem a ticket: (1) a machine to dispense pre-printed paper instant lottery tickets (e.g., scratch-off tickets); (2) a machine to dispense pre-determined electronic instant lottery tickets and reveal the outcome; or (3) a machine to dispense paper lottery tickets with numbers selected by the player or randomly by the machine, with the winning number selected in a drawing by the department. See paragraph R of Part III of Gaming Compact at page 10.

<sup>27</sup> Section 24.112(15)(c), F.S., provides that a vending machine that dispenses a lottery ticket “may dispense change to a purchaser but may not be used to redeem any type of winning lottery ticket.”

<sup>28</sup> See last sentence in paragraph B of Part XII of Gaming Compact at page 43.

<sup>29</sup> The Division of Pari-Mutuel Wagering in the Department of Business & Professional Regulation has not yet issued its 84th Annual Report for Fiscal Year 2014-2015. See <http://www.myfloridalicense.com/dbpr/pmw/PMW-Publications.html> (last visited Feb. 19, 2016).

<sup>30</sup> See Pari-Mutuel Wagering Permitholders With 2014-2015 Operating Licenses map at <http://www.myfloridalicense.com/dbpr/pmw/documents/MAP-Permitholders--WITH--2015-2016-OperatingLicenses.pdf> (last accessed Feb. 19, 2016).

<sup>31</sup> See the Stipulation and Consent Order at <http://www.floridagamingwatch.com/wp-content/uploads/Hamilton-Jai-Alai-Consent-Order.pdf> (last accessed Feb. 19, 2016).

<sup>32</sup> According to information in the latest available 2013-2014 Annual Report from the Division of Pari-Mutuel Wagering, both Jacksonville Kennel Club and Bayard Raceways (St. Johns Greyhound Park) conduct races at Orange Park Kennel Club; H&T Gaming conducts racing at Mardi Gras; Palm Beach Greyhound Racing conducts racing at Palm Beach Kennel Club;

operating at those locations.<sup>33</sup> One greyhound racing permitholder's operating license was suspended late in 2014,<sup>34</sup> so there are now 19 greyhound racing permitholders with operating licenses.<sup>35</sup> There are 12 permitholders that do not have operating licenses for Fiscal Year 2014-2015: two greyhound,<sup>36</sup> three jai alai,<sup>37</sup> one limited thoroughbred,<sup>38</sup> and six quarter horse.<sup>39</sup>

### **Regulation by Division of Pari-Mutuel Wagering**

Pari-mutuel wagering is regulated by the Division of Pari-Mutuel Wagering (division) in the Department of Business and Professional Regulation (department). The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. According to the division, there were 19 license suspensions, and \$80,950 in fines assessed for violations of all pari-mutuel statutes and rules in Fiscal Year 2013-2014.<sup>40</sup>

A "performance" is a minimum of eight consecutive live races.<sup>41</sup> At least three live performances must be held at a track each week.<sup>42</sup> When a permitholder conducts at least three live performances in a week,<sup>43</sup> it must pay purses (cash prizes to participants) on wagers accepted at the track on certain greyhound races run at other tracks (in Florida or elsewhere).<sup>44</sup> In order to receive an operating license, permitholders must have conducted a full schedule of live racing during the preceding year.<sup>45</sup>

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Tampa Greyhound conducts races at St. Petersburg Kennel Club (Derby Lane); West Volusia Racing conducts races at Daytona Beach Kennel Club; Dania Summer Ja Alai conducts games at Dania Jai Alai; Tropical Park conducts races at Calder Race Course. See <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2013-2014--83rd--20150114.pdf>, at pp. 24 - 35 (last accessed Feb. 19, 2016).

<sup>33</sup> The division indicated that H & T Gaming @ Mardi Gras and Mardi Gras operate at a facility in Hallandale Beach, Daytona Beach Kennel Club and West Volusia Racing-Daytona operate at a facility in Daytona Beach, Palm Beach Kennel Club and License Acquisitions-Palm Beach operate at a facility in West Palm Beach, Miami Jai Alai and Summer Jai Alai operate at a facility in Miami, and Sanford-Orlando Kennel Club and Penn Sanford @SOKC operate at a facility in Longwood.

<sup>34</sup> See <http://www.myfloridalicense.com/dbpr/pmw/documents/CurrentPermitholdersList.pdf> (last visited Feb. 19, 2016) for a list of current permitholders and their licensing status.

<sup>35</sup> Information about permitholders for Fiscal Years 2013-2014, 2014-2015, and 2015-2016 is available at <http://www.myfloridalicense.com/dbpr/pmw/track.html> (last visited Feb. 19, 2016).

<sup>36</sup> North American Racing Association (Key West) and Jefferson County Kennel Club (Monticello).

<sup>37</sup> Tampa Jai-Alai, Gadsden Jai-alai (Chattahoochee), and Kings Court Key (Florida City).

<sup>38</sup> Under s. 550.3345, F.S., during Fiscal Year 2010-2011 only, holders of quarter horse racing permits were allowed to convert their permits to a thoroughbred racing permit, conditioned upon specific use of racing revenues for enhancement of thoroughbred purses and awards, promotion of the thoroughbred horse industry, and the care of retired thoroughbred horses. Two conversions occurred, Gulfstream Park Thoroughbred After Racing Program (GPTARP) (Hallandale, Broward County), and Ocala Thoroughbred Racing (Marion County).

<sup>39</sup> Pompano Park Racing (Pompano Beach), Tampa Bay Downs (Oldsmar), ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), St. Johns Racing (St. Johns County), and North Florida Racing (Jacksonville).

<sup>40</sup> See *supra* note 7, at page 3.

<sup>41</sup> Section 550.002(25), F.S.

<sup>42</sup> Section 550.002(11), F.S.

<sup>43</sup> The performances may be during the day or in the evenings, as set forth in the schedule that is part of the operating license issued by the division.

<sup>44</sup> Section 550.09514(2)(c), F.S.

<sup>45</sup> Section 550.002(11), F.S. In accordance with s. 550.002(38), F.S., a full schedule of live racing is calculated from July 1 to June 30, which is the state fiscal year.

Current law provides complex requirements for the calculation of a “full schedule of live racing or games:”

- For a greyhound or jai alai permitholder, . . .at least 100 live evening or matinee performances during the preceding year;
- For a permitholder who has a converted permit . . . at least 100 live evening and matinee wagering performances during either of the 2 preceding years;
- For a jai alai permitholder who does not operate slot machines . . ., who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games . . . has been less than \$4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, . . . at least 40 live evening or matinee performances during the preceding year;
- For a jai alai permitholder who operates slot machines . . ., at least 150 performances during the preceding year;
- For a harness permitholder, the conduct of at least 100 live regular wagering performances during the preceding year;
- For a quarter horse permitholder at its facility unless an alternative schedule of at least 20 live regular wagering performances is agreed upon by the permitholder and either the Florida Quarter Horse Racing Association or the horsemen’s association representing the majority of the quarter horse owners and trainers at the facility and filed with the division along with its annual date application, in the Fiscal Year 2010-2011, . . . at least 20 regular wagering performances, in Fiscal Year 2011-2012 and Fiscal Year 2012-2013, . . . at least 30 live regular wagering performances, and for every fiscal year after Fiscal Year 2012-2013, . . . at least 40 live regular wagering performances;
- For a quarter horse permitholder leasing another licensed racetrack, the conduct of 160 events at the leased facility; and
- For a thoroughbred permitholder, the conduct of at least 40 live regular wagering performances during the preceding year.

For a permitholder restricted by statute to certain operating periods within the year when other similar permitholders are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games are calculated pro rata based on the authorized operating period and the full calendar year, and the resulting number of live performances is the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder. A live performance must consist of no fewer than eight races or games conducted live for each of a minimum of three performances each week at the permitholder’s licensed facility under a single admission charge.

If a permitholder does not conduct all of the performances specified in its operating license, the division may determine whether to fine the permitholder or suspend<sup>46</sup> the license,<sup>47</sup> unless the

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<sup>46</sup> After Jefferson County Kennel Club failed to conduct scheduled performances, its operating license was suspended September 22, 2014 under a consent order. See the order at <http://www.myfloridalicense.com/dbpr/pmw/PMW-PermitholderOperatingLicenses--2014-2015.html> (last visited Feb. 19, 2016).

<sup>47</sup> Section 550.01215(4), F.S.

failure is due to certain events beyond the permitholder's control.<sup>48</sup> Financial hardship itself is not an acceptable basis to avoid a fine or suspension.<sup>49</sup>

### **Types of Handle (Funds Bet by Players)**

Section 550.002(13), F.S., defines handle as the aggregate contributions to pari-mutuel pools. There are four types of handle detailed in annual reports<sup>50</sup> of the division:

- Live ontrack, from live races or games at the track/fronton;
- Simulcast, from live races or games originating out-of-state and broadcast to a Florida track or fronton;
- Intertrack, from a Florida track or fronton (acting as host) broadcasting live races or games to other Florida tracks or frontons; and
- Intertrack simulcast, from rebroadcasting of simulcast signals received by a Florida track or fronton to other Florida tracks or frontons.

### **Taxes on Handle**

#### ***Exemptions***

As provided in s. 550.09514(1), F.S., all greyhound racing permitholders that conduct a full schedule of live racing in a year are eligible for tax exemptions in the form of a credit that directly reduces their state taxes, in the following amounts:

- \$500,000 annually to each permitholder that conducted a full schedule of live racing in 1995, and "are closest to another state that authorizes greyhound pari-mutuel wagering." These requirements qualify three greyhound racing permitholders (Washington County Kennel Club (Ebro), Pensacola Greyhound, and Jefferson County Kennel Club (Monticello));
- \$360,000 annually to each of the other greyhound racing permitholders.

If a permitholder cannot use its full tax exemption amount, then it may transfer the unused portion of the exemption to another permitholder that has acted as a host track by accepting intertrack wagering.<sup>51</sup> The transfer may occur only once per state fiscal year, and there must be a dollar-for-dollar payment (no discount) by the host track.

#### ***Tax Exemption Credit for Daily License Fees***

Each permitholder receives a tax credit based on the number of live races conducted in the previous year multiplied by the daily license fee.<sup>52</sup> This works out to a 100 percent refund of daily license fees for every live race conducted. The daily license credit may also be transferred for payment in full by a host track to a transferring permitholder.

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2013-2014--83rd--20150114.pdf>, at 2 (last accessed Feb. 19, 2016).

<sup>51</sup> Section 550.0951(1)(b), F.S.

<sup>52</sup> Section 550.0951(1)(a), F.S.

***Tax Exemption Credit for Escheated Winnings***

Section 550.1645, F.S., provides that after one year, the winnings from all unclaimed pari-mutuel tickets become property of the state, and permitholders must pay the unclaimed (escheated) winnings to the state. The funds are deposited into the State School Fund and are used for the maintenance of public free schools. Section 550.1647, F.S., provides that permitholders who pay escheated winnings to the state are entitled to a 100 percent credit equal to the escheated winnings payment, to be credited in the next fiscal year against greyhound racing taxes; however, the permitholder must pay an amount equal to 10 percent of the escheat credit to qualified greyhound adoption programs.

***Tax Rates on Wagering Handle***

The stated tax rates on greyhound racing handle (i.e., on live ontrack, simulcast, intertrack, and intertrack simulcast handle as described above) vary considerably. Section 550.0951(3), F.S., specifies rates of 5.5 percent, 7.6 percent, 3.9 percent, and 0.5 percent of handle that depend on the type of wager (and the location of the tracks involved in any intertrack wagering).

Current law provides that intertrack wagering is taxed at the rate of 7.1 percent if the host track is a jai alai fronton. The rate drops significantly to a rate of .5 percent (one-half of a percent) if (1) both the host and guest tracks are thoroughbred permitholders, or (2) a guest track is located more than 25 miles away from the host track and within 25 miles of a thoroughbred permitholder currently conducting live racing.

***Greyhound Permitholders and Cardroom Licenses***

Section 849.086, F.S., provides that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit and license to conduct a full schedule of greyhound performances may obtain a cardroom license. Eleven of the twelve currently operating greyhound racing locations have cardrooms.<sup>53</sup> As a result of the so-called “90 percent rule,” the required minimum of live performances varies among greyhound permitholders (e.g., in Fiscal Year 2012-2013, the number of performances ranged from 104 to 395), as shown below.

Greyhound Racing Permitholder	Location (City and County)	Performances FY 2012-13	90 Percent Rule*	Full Schedule
H & T Gaming @ Mardi Gras	Hallandale Beach (Broward)	104	100	100
Mardi Gras	Hallandale Beach (Broward)	110	100	100
Flagler Greyhound (Magic City)	Miami (Miami-Dade)	166	163	100
Naples-Ft. Myers	Bonita Springs (Lee)	395	394	100
Jacksonville Kennel Club (bestbet)	Jacksonville (Duval)	112	100	100
Orange Park Kennel Club	Orange Park (Clay)	112	100	100

<sup>53</sup> Section 849.086(5)(a), F.S., provides that an initial cardroom license may be issued to a permitholder only after its facilities are in place and it has conducted its first day of live racing or games. If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing. *See* s. 849.086(5)(b), F.S. Renewal of a cardroom license requires that in its annual pari-mutuel license application, the permitholder must request to conduct at least 90 percent of the performances conducted either (1) in the year in which its first cardroom license was issued, or (2) in the state fiscal year immediately prior to the application if a full schedule of live racing was conducted.

Greyhound Racing Permitholder	Location (City and County)	Performances FY 2012-13	90 Percent Rule*	Full Schedule
Bayard Raceways (St. Johns)	Orange Park (Clay)	191	100	100
Daytona Bch Kennel Club	Daytona Beach (Volusia)	224	100	100
West Volusia Racing-Daytona	Daytona Beach (Volusia)	189	100	100
Palm Beach Kennel Club	West Palm Beach (Palm Beach)	349	100	100
License Acquisitions-Palm Beach	West Palm Beach (Palm Beach)	116	100	100
Sanford-Orlando Kennel Club	Longwood (Seminole)	178	N/A	N/A
Penn Sanford @SOKC	Longwood (Seminole)	156	N/A	N/A
Tampa Greyhound	Tampa (Hillsborough)	207	100	100
Jefferson County Kennel Club	Monticello (Jefferson)	104	217	100
Pensacola Kennel Club	Pensacola (Escambia)	159	160	100
St. Petersburg Kennel Club	St. Petersburg (Pinellas)	207	100	100
Sarasota Kennel Club	Sarasota (Sarasota)	190	188	100
Washington County Kennel Club	Ebro (Washington)	173	167	100
Melbourne Greyhound Park	Melbourne (Brevard)	104	93	93

Section 849.086(13), F.S., provides that at least 4 percent of a greyhound permitholder’s gross cardroom receipts be used to supplement greyhound purses.

**Intertrack Wagering & Simulcast Wagering**

Section 550.615(2), F.S., allows any permitholder that has conducted a full schedule of live racing in the preceding year to receive broadcasts and accept wagers on any type of pari-mutuel race or game conducted by other licensed pari-mutuel permitholders in the state. This type of wagering is defined as “intertrack wagering.”<sup>54</sup>

Wagering on a simulcast event occurs when a wager is placed on (1) a live race or game that is broadcast outside the state from an in-state location, or (2) a live race or game that occurs outside the state but is broadcast to a permitholder in the state.<sup>55</sup>

**Slot Machine Gaming and Cardrooms**

Chapter 551, F.S., authorizes slot machine gaming at the location of certain licensed pari-mutuel locations in Miami-Dade County or Broward County and provides for state regulation.<sup>56</sup> Chapter 849, F.S., authorizes cardrooms at certain pari-mutuel facilities.<sup>57</sup> A license to offer pari-mutuel wagering, slot machine gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.<sup>58</sup>

<sup>54</sup> Section 550.002(17), F.S.

<sup>55</sup> Section 550.002(32), F.S.

<sup>56</sup> See ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.

<sup>57</sup> Section 849.086, F.S. Section 849.086(2)(c), F.S., defines “cardroom” to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.

<sup>58</sup> See s. 550.1625(1), F.S., “...legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state.” See also *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, which states “Florida courts have consistently emphasized the special nature of

## Gaming Compact with the Seminole Tribe of Florida

The current gaming compact with the Seminole Tribe of Florida (Seminole Tribe) dated April 7, 2010 (the 2010 Gaming Compact)<sup>59</sup> provides that it is not a crime for a person to participate in raffles, drawings, slot machine gaming, or banked card games (e.g., blackjack or baccarat) at a tribal facility operating under the 2010 Gaming Compact.<sup>60</sup>

The 2010 Gaming Compact also provides for revenue-sharing payments from the Seminole Tribe to the state. For its exclusive authority during a five-year period<sup>61</sup> to offer banked card games on tribal lands at five locations, and to offer slot machine gaming during the 20-year term of the 2010 Gaming Compact outside Miami-Dade and Broward Counties, the Seminole Tribe pays the State of Florida a share of “net win” (approximately \$240 million per year).<sup>62</sup>

Except for those locations authorized pursuant to the 2010 Gaming Compact, free-standing, commercial casinos are not authorized, and gaming activity, other than what is expressly authorized, is illegal.

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legalized racing, describing it as a privilege rather than as a vested right,” citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936).

<sup>59</sup> The 2010 Gaming Compact was executed by the Governor and the Seminole Tribe on April 7, 2010, ratified by the Legislature, effective April 28, 2010, and approved by U.S. Secretary of the Interior, pursuant to the Indian Gaming Regulatory Act of 1988, on June 24, 2010. It took effect when published in the Federal Register on July 6, 2010. The 20-year term of the 2010 Gaming Compact expires July 31, 2030, unless renewed. Section 285.710(1)(f), F.S., designates the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation as the “state compliance agency” having authority to carry out the state’s oversight responsibilities under the 2010 Gaming Compact. See <http://www.flsenate.gov/. . . RI/Links/Gaming Compact between The Seminole Tribe of Florida and the State of Florida.pdf> (last accessed Feb. 19, 2016).

<sup>60</sup> See s. 285.710, F.S., especially subsections (3), (13), and (14). The seven tribal locations where gaming is authorized by the 2010 Gaming Compact are: (1) Seminole Hard Rock Hotel & Casino—Hollywood (Broward); (2) Seminole Indian Casino—Coconut Creek (Broward); (3) Seminole Indian Casino—Hollywood (Broward); (4) Seminole Hard Rock Hotel & Casino—Tampa (Hillsborough); (5) Seminole Indian Casino—Immokalee (Collier); (6) Seminole Indian Casino—Brighton (Glades); and (7) Seminole Indian Casino—Big Cypress (Hendry). Banked card games are not authorized at the Brighton and Big Cypress casinos.

<sup>61</sup> While the exclusive authorization to conduct banked card games expired July 31, 2015, and has not been renewed, according to staff at the department and the Legislature’s Office of Economic and Demographic Research, the Seminole Tribe has continued to transmit monthly payments to the state that include estimated table games revenue. The Seminole Tribe and the State of Florida are parties to litigation regarding the offering of table games by the Seminole Tribe after July 31, 2015. Those parties have negotiated a proposed gaming compact dated December 7, 2015 (the 2015 Gaming Compact), that the Governor, as the designated state officer responsible for negotiating and executing tribal-state gaming compacts with federally recognized Indian tribes, has transmitted to the President of the Senate and the Speaker of the House of Representatives for consideration, as required by s. 285.712, F.S. To be effective, the proposed 2015 Gaming Compact must be ratified by the Senate and by the House, by a majority vote of the members present. See s. 285.712(3), F.S.

<sup>62</sup> Subject to the outcome of the pending litigation between the state and the Seminole Tribe respecting continuation of the authorization to offer table games, the 2010 Gaming Compact provides if (1) authorization for banked card games is not extended beyond July 31, 2015, or (2) the Legislature authorizes Class III (casino-style) games in Broward or Miami-Dade County other than at the eight existing state-licensed pari-mutuel locations, then the “net win” for revenue sharing will exclude amounts from the Seminole Tribe’s facilities in Broward County (i.e., payments will be reduced by approximately \$120 million per year). If the Legislature authorizes new Class III (casino-style) games outside Broward and Miami-Dade Counties, then all revenue sharing under the 2010 Gaming Compact is discontinued.

### **Other Authorized Activities**

Chapter 849, F.S., also authorizes, with conditions, penny-ante games,<sup>63</sup> bingo,<sup>64</sup> charitable drawings, game promotions (sweepstakes),<sup>65</sup> bowling tournaments, and amusement games and machines.<sup>66</sup>

### **Care of Racing Greyhounds**

The division, by administrative rule adopted pursuant to s. 550.2415(12), F.S., requires notification of the death of a racing greyhound while in training or during a race on the grounds of a greyhound track or kennel compound.<sup>67</sup> The track must notify the division, within 18 hours, of the deceased animal's location, where the death occurred, and how to reach the kennel operator, trainer and the person making the report. Haulers or drivers who transport racing animals must be licensed, and greyhound trainers of record are responsible for physically inspecting the animals in their care for sores, cuts, abrasions, muzzle burns, fleas, and ticks.<sup>68</sup> If an animal is injured and later dies or is euthanized, the division may conduct a postmortem examination.<sup>69</sup>

## **III. Effect of Proposed Changes:**

### **Sale of Lottery Tickets at Point-of-Sale Terminals**

**Sections 1, 2, and 3** of the bill regarding sales of lottery tickets at point-of-sale terminals take effect upon the bill becoming a law.

**Section 1** of the bill amends s. 24.103, F.S., to add the term "point-of sale terminal." A point-of-sale terminal is another type of lottery vending machine for the sale of lottery tickets at retail locations under certain conditions. Payments for lottery tickets at a point-of-sale terminal may be paid by credit card, debit card, or other similar charge cards. The electronic device must be supported by networks that enable verification, payment, transfer of funds, and logging of transactions.

**Section 2** of the bill amends s. 24.105, F.S., and authorizes the department to create a program and adopt rules for the purchase of lottery tickets at point-of-sale terminals by persons who are at least 18 years old. A point-of-sale terminal could have multiple uses (e.g., purchase of lottery tickets incidental to the purchase of other retail goods or services), while current lottery vending machines dispense lottery tickets only. Rules adopted by the department for the program must limit the dollar amount of lottery tickets purchased, create a process to enable a customer to restrict or prevent his or her own access to lottery tickets or games, and ensure that the program

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<sup>63</sup> Section 849.085, F.S.

<sup>64</sup> Section 849.0931, F.S.

<sup>65</sup> Section 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

<sup>66</sup> Section 849.161, F.S.

<sup>67</sup> See Rule 61D-2.023(3)(k), F.A.C., which became effective May 21, 2013. According to the department, 192 reports of greyhound deaths were filed with the division between May 31, 2013 and December 31, 2014.

<sup>68</sup> See Rules 61D-2.023(4) and (6), F.A.C.

<sup>69</sup> Section 550.2415(9), F.S. also provides that postmortem examinations may be made of any animal that dies while housed at a permitted racetrack, association compound, or licensed kennel or farm.

does not breach the exclusivity provisions of any Indian gaming compact to which the state is a party.

**Section 3** of the bill amends s. 24.112, F.S., to provide that point-of-sale terminals may be used by the department, approved vendors, and approved retailers to facilitate the sale of lottery tickets or games. The bill tracks the following requirements stated in the proposed 2015 Gaming Compact<sup>70</sup> for lottery vending machines, providing that a point-of-sale terminal:

- Must dispense a paper lottery ticket with numbers selected by the player or randomly by the machine;
- Does not reveal the winning numbers (which are selected at a later time and a different location, through a drawing held by the Florida Lottery);
- May not make use of mechanical reels or video depictions of slot machine or casino game themes or titles; and
- May not be used to redeem winning tickets.

The bill also provides that the device must recognize a valid driver license or other process to verify that the purchaser is at least 18 years of age. It must be in compliance with all department requirements for lottery sales, and the platform must be certified by the department.

### **Pari-mutuel Permitholders**

#### ***Ending Live Racing or Games (Decoupling)***

**Section 4** of the bill amends s. 550.002, F.S., that provides requirements for live racing. The bill allows a greyhound racing permitholder, jai alai permitholder, harness racing permitholder, and quarter horse racing permitholder to determine, on an annual basis, whether it will offer live racing or games (live performances) at its pari-mutuel facility while it continues to operate its slots machines or cardroom. Ending the requirement for the offering of live performances but continuing to offer slot machines or cardrooms is known as “decoupling.”

The bill deletes outdated references to converted greyhound permits and partial-year racing dates.

The bill reduces the minimum number of required live performances from 100 to 58 for summer jai alai permitholders who do not operate slot machines or meet other financial requirements. The bill maintains the requirement in current law that a jai alai permitholder that operates slot machines in its pari-mutuel facility must conduct at least 150 performances.

**Section 5** of the bill amends s. 550.01215, F.S., regarding operating license applications (applications) required to be filed annually with the Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (department) by pari-mutuel permitholders for a license to conduct pari-mutuel wagering during the next fiscal year (July 1 through June 30). The bill amends this section to require the filing of an application by all greyhound racing permitholders, jai alai permitholders, harness racing permitholders, and quarter

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<sup>70</sup> See the proposed 2015 Gaming Compact, Comparison Chart, and transmittal letter from Governor Scott at [http://www.flsenate.gov/PublishedContent/Committees/2014-2016/RI/Links/2015\\_Gaming\\_Compact\\_Chart\\_and\\_Letter\\_from\\_Governor\\_Scott.pdf](http://www.flsenate.gov/PublishedContent/Committees/2014-2016/RI/Links/2015_Gaming_Compact_Chart_and_Letter_from_Governor_Scott.pdf) (last accessed Feb. 19, 2016).

horse racing permitholders that accept intertrack and simulcast wagering, including permitholders that do not conduct live performances. Such permitholders, if authorized to conduct slot machine gaming, will not be required to conduct live performances, and their slot machine license will not be conditioned upon the conduct of live performances.

The bill requires permitholders that accept wagers on broadcast events to disclose the dates of all those events in their application.

The bill provides that certain greyhound racing permitholders<sup>71</sup> may specify that they do not intend to conduct live racing, or that they intend to conduct less than a full schedule of live racing, in the next state fiscal year. Further, a greyhound racing permitholder may receive an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility pursuant to s. 550.475, F.S., which requires that the permitholders be located within a 35-mile radius of each other.

The bill allows the division to approve changes in racing dates for Fiscal Year 2016-2017, if the requests from a greyhound racing permitholder is received before August 31, 2016.

The bill states the requirements for a summer jai alai permitholder to operate a jai alai fronton only for the summer season each year, for dates selected by the permitholder (between May 1 and November 30). All taxes, rules, and provisions of ch. 550, F.S., which apply to winter jai alai permitholders apply to summer jai alai permitholders. Winter and summer jai alai permitholders may not operate on the same days or in competition with each other, but the facilities of a winter jai alai permitholder may be leased for the operation of a summer meet.

The bill deletes a provision in s. 550.01215(6), F.S., that allows a permit that was converted from a jai alai permit to a greyhound racing permit, to convert back to a jai alai permit, but only if greyhound racing was never conducted, or the permitholder has not conducted greyhound racing for 12 consecutive months.

**Section 6** of the bill amends s. 550.0251, F.S., concerning the required content of the annual report from the division to the Governor, Senate, and House of Representatives. The annual report must include, at a minimum:

- Recent events in the gaming industry, including pending litigation; pending permitholder, facility, cardroom, slot, or operating license applications; and new and pending rules;
- Actions of the department relating to the implementation and administration of ch. 550, F.S.;
- The state revenues and expenses associated with each form of authorized gaming; revenues and expenses associated with pari-mutuel wagering must be further delineated by the class of license;
- The performance of each pari-mutuel wagering licensee, cardroom licensee, and slot machine licensee;
- A summary of disciplinary actions taken by the department; and

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<sup>71</sup> Only those greyhound racing permitholders that conducted a full schedule of live racing for a period of at least 10 consecutive state fiscal years after the state Fiscal Year 1996-1997, or that converted a permit to a permit to conduct greyhound racing after that state fiscal year, are authorized to file an application in this manner. *See* Lines 613-623 of the bill, amending s. 550.01215(1) to add subsection (b).

- Any suggestions to more effectively achieve the purposes of ch. 550, F.S.

**Section 7** of the bill amends s. 550.054, F.S., respecting applications for permits to conduct pari-mutuel wagering.<sup>72</sup> The bill provides for revocation of permits, unless a failure to obtain an operating license was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. The division must revoke a permit if the permitholder:

- Has not obtained an operating license for a period of more than 24 consecutive months after June 30, 2012; or
- Fails to make payments for taxes due on handle for more than 24 months.

The bill provides that a new pari-mutuel permit may not be approved or issued after July 1, 2016, and a revoked permit is void and may not be reissued.

The bill allows the division to place a permit into inactive status for a period of 12 months for good cause and renew inactive status for a period of up to 12 months, but a permit may not be inactive for a period of more than 24 consecutive months. Entities with inactive permits are not eligible for licensure for pari-mutuel wagering, slot machines, or cardrooms.

The bill provides that a pari-mutuel license may not be transferred or reissued so as to change the location of a pari-mutuel facility, cardroom, or slot machine facility. The bill removes provisions allowing for the transfer of a thoroughbred permit to another racetrack and allowing conversion of a jai alai permit to a greyhound racing permit.

The bill limits the relocation of a pari-mutuel facility, cardroom, or slot machine facility. The bill allows a greyhound racing permit that was converted from a jai alai to be relocated to another location, if the application is received by July 31, 2018, and if the new location is:

- In the same county;
- Within a 30-mile radius of the original location; and
- Approved under the zoning regulations of the affected county or municipality.

**Section 8** of the bill repeals s. 550.0555, F.S., relating to the procedures for relocating a greyhound racing permit.

**Section 9** of the bill repeals s. 550.0745, F.S., relating to the procedure to convert a pari-mutuel permit to a summer jai alai permit.

**Section 10** of the bill amends s. 550.0951, F.S., respecting the payment of daily license fee and taxes. The bill deletes the tax exemption specified in s. 550.09514(1), F.S., of \$360,000 or \$500,000 for each greyhound racing permitholder, and deletes other tax credits. The bill deletes the authorization in current law that allows transfers of the tax exemption or other credits among greyhound permitholders, and the requirement that such transfers be approved by the division.

The bill reduces the tax on handle for greyhound racing to 1.28 percent from 5.5 percent. It appears that the tax on handle at Line 958 on page 54 of the bill should also be reduced to 1.28 percent to conform the bill to this reduction. A tax of .5 percent is imposed if the host and guest

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<sup>72</sup> Applications by permitholders for operating licenses are addressed in Section 2 of the bill.

tracks are thoroughbred racing permitholders, or if the guest track is located outside the market area of a host track that is not a greyhound racing track and within the market of a thoroughbred racing permitholder currently conducting a live meet.

**Section 11** of the bill amends s. 550.09511, F.S., to make conforming references.

**Section 12** of the bill amends s. 550.09512, F.S., respecting harness horse racing, by requiring the division to revoke the permit of a harness horse racing permitholder that does not pay tax that is due on handle for live harness racing performances for a full schedule of live races for more than 24 consecutive months, unless the failure to operate and pay tax was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. The revoked permit is void and may not be reissued. The bill removes a provision allowing reissuance of a harness horse permit that has been revoked for nonpayment of taxes (i.e., has escheated to the state).

**Section 13** of the bill amends s. 550.09514, F.S., respecting greyhound racing taxes and purse requirements. The bill removes tax credits of \$360,000 and \$500,000 that are available to permitholders. The bill requires greyhound racing permitholders that conduct live racing during a fiscal year to pay an additional purse amount annually of \$60 for each live race conducted in the preceding fiscal year. The bill removes fees equal to 75 percent of the daily license fees. Purses must be disbursed weekly during the permitholder's race meet. The bill clarifies that the tax rate on handle for intertrack wagering is provided in s. 6, ch. 2000-354, L.O.F.

**Section 14** of the bill amends s. 550.09515, F.S., respecting thoroughbred racing taxes. The bill requires the division to revoke the permit of a thoroughbred racing permitholder that does not pay tax that is due on handle for live thoroughbred horse performances for a full schedule of live races for more than 24 consecutive months, unless the failure to operate and pay tax was the direct result of fire, strike, war, or other disaster or event beyond the permitholder's control. A revoked permit is void and may not be reissued. The bill deletes a provision that allows a thoroughbred horse permit to be reissued after the permit has been revoked for nonpayment of taxes, i.e., the permit has escheated to the state.

**Section 15** of the bill amends s. 550.1625, F.S., respecting greyhound racing taxes by removing a reference to a greyhound racing permitholder paying the breaks<sup>73</sup> tax.

**Section 16** of the bill repeals s. 550.1647, F.S., respecting any unclaimed, uncashed, or abandoned pari-mutuel tickets which have remained in the custody of a greyhound racing permitholder.

**Section 17** of the bill amends s. 550.1648, F.S., respecting greyhound racing adoptions, and requires as a condition of adoption, that a bona fide organization must provide sterilization of greyhounds by a licensed veterinarian before relinquishing custody of the greyhound to the adopter. The fee for sterilization may be included in the cost of adoption.

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<sup>73</sup> Section 550.002(1), F.S., defines "breaks" to mean "the portion of a pari-mutuel pool which is computed by rounding down to the nearest multiple of 10 cents and is not distributed to the contributors or withheld by the permitholder as takeout."

**Section 18** of the bill creates s. 550.1752, F.S., establishing a pari-mutuel permit reduction program. The program is created to authorize the division to purchase and cancel active pari-mutuel permits. Funding for the program is generated by revenue share payments made by the Seminole Tribe of Florida under the Gaming Compact and received by the State after October 31, 2015. Payments funding the program are calculated on a monthly basis until the division determines sufficient funds are available, but the funding limit for the program is \$20 million.

A pari-mutuel permitholder may not submit an offer to sell unless it is actively conducting racing or jai-alai as required and satisfies all applicable requirements for the permit. Sufficient moneys must be available before the purchase may be made. The division may adopt rules to implement the program.

The value of the permit must be based upon the valuation of fair market value by one or more independent appraisers selected by the division. The value may not include the value of real estate or personal property. The division may establish a value for the permit that is lower than the amount determined by the independent appraiser, but may not establish a higher value.

The division must accept the offer or offers that best use the available funding, however, the division may also accept offers that it determines are the most likely to reduce the incidence of gaming in Florida. The division must cancel a permit purchased through the program. This provision expires July 1, 2018, unless reenacted.

**Section 19** of the bill amends s. 550.1752, to establish a thoroughbred purse supplement program, effective July 1, 2018. The program is created to maintain an active and viable live thoroughbred racing, owning, and breeding industry in Florida. A reenactment of the permit reduction program (created by the bill in **Section 18** above) that is effective after July 1, 2018 may create multiple demands on the funding source for each program. There is no provision for expiration of the thoroughbred supplement purse program.

Funding for the program is generated by revenue share payments made by the Seminole Tribe of Florida under the Gaming Compact and received by the State after July 1, 2018. Payments funding the program are calculated on a monthly basis until the division determines sufficient funds are available. The funding for the purse supplement program is \$20 million annually. The division may adopt rules to implement the program.

The division must distribute the funds on a pro rata basis based upon the number of live race days to be conducted by each thoroughbred permitholder pursuant to its annual racing license. If a permitholder fails to conduct a race day, then the allocated funds associated with that day must be returned to the division, so that it may reapportion the allocation of funds.

**Section 20** of the bill creates s. 550.2416, F.S., to require the reporting of racing greyhound injuries. The bill requires greyhound track veterinarians to prepare and sign detailed reports under oath, on a form adopted by the division, of all injuries to racing greyhounds that occur while the greyhounds are on a racetrack.

If the injury of a racing greyhound occurs at a location other than a racetrack, or during transportation, the injury report must state the location where the injury occurred and the

circumstances. A report for such an injury must be prepared and signed under oath by a greyhound owner, trainer, or kennel operator who has knowledge of the injury.

Reporting is required within 7 days after the date the injury occurred or is believed to have occurred. The reports are public records that must be maintained for 7 years by the division.

The bill requires reporting of the following information about an injury:

- Specific identification of the injured greyhound (name, tattoos, microchip information), with contact information for the greyhound's owner, trainer, and kennel operator; and
- The type and location of the injury, its cause, and estimated recovery time.

Further, if the injury occurs during a race, an injury report must state:

- The name of the racetrack and the time injury occurred;
- The distance, grade, race, and post position of the injured greyhound; and
- The weather and track conditions at the time of the injury.

False statements in an injury report or the failure to report an injury subjects licensees of the department to disciplinary action under pari-mutuel, regulatory, and professional practice laws. Racing greyhound injury reports must be sworn to under penalty of perjury.<sup>74</sup> False statements in an injury report by a veterinarian, owner, trainer, or kennel operator may result in discipline of that licensee by the division as permitted by the provisions of ch. 550, F.S., (Pari-mutuel Wagering, ch. 455, F.S., (Business and Professional Regulation: General Provisions) or ch. 474, F.S., (Veterinary Medical Practice).

The requirement to report injuries to racing greyhounds does not apply to injuries to a service animal, personal pet, or greyhound that has been adopted as a pet.

**Section 21** of the bill amends s. 550.26165, F.S., respecting breeders' awards to conform cross-references.

**Section 22** of the bill amends s. 550.3345, F.S., regarding the issuance of limited thoroughbred racing permits (through conversion from a quarter horse permit as allowed by ch. 2010-29, L.O.F.). The bill removes obsolete language. The bill retains existing law that allows for relocation of the permit,<sup>75</sup> and allows relocation to another county without a referendum, if the permit "is situated in such a manner that it is located in more than one county."

Such relocation remains subject to the requirement in s. 550.3345(2)(d), F.S., that the relocation be approved under zoning and land use regulations in the new county or municipality. The bill prohibits the transfer of a limited thoroughbred racing permit to another person or entity.

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<sup>74</sup> Section 837.012, F.S., provides that makers of false statements under oath in regard to any material matter (such as those made in an injury reporting form) which he or she does not believe to be true, are guilty of a first degree misdemeanor and may be sentenced to a term of imprisonment up to one year and required to pay a fine not to exceed \$1,000.

<sup>75</sup> See s. 550.3345(2)(d), F.S.

**Section 23** of the bill amends s. 550.3551, F.S., regarding transmission of racing and jai alai information, to remove an outdated reference and to remove a reference to live racing requirements for intertrack wagering by harness horse permitholders.

**Section 24** of the bill amends s. 550.375, F.S., regarding the operation of certain harness horse race tracks, by conforming a cross-reference.

**Section 25** of the bill amends s. 550.475, F.S., to prohibit permitholders from leasing facilities from a permitholder that is not conducting a full schedule of live racing. When a permitholder chooses to end live racing at a pari-mutuel facility, any permitholder leasing that facility may no longer lease it, and must move its racing or games to another facility that is conducting a full schedule of live racing.<sup>76</sup>

**Section 26** of the bill deletes s. 550.5251(1), F.S., which requires thoroughbred permitholders to annually file applications to conduct race meetings that specify the number and dates of all performances that the permitholder intends to conduct.

**Section 27** of the bill amends s. 550.615, F.S., respecting intertrack wagering, as to which tracks or frontons may receive broadcasts of any type of race or game, and accept wagering on them. The bill provides that only tracks that have conducted a full schedule of live racing for at least five consecutive years since 2010, may receive such broadcasts.

The bill deletes ss. 550.615(6) and (7), F.S., which limits intertrack wagering where there are three or more horserace permitholders within 25 miles of each other, and requiring the consent of a permitholder where there are only two permits (greyhound racing and jai alai) in the county.

The bill provides that a greyhound racing permitholder that accepts intertrack wagers on live greyhound signals is not required to obtain written consent from any operating greyhound racing permitholder within its market area.

**Section 28** of the bill removes provisions in s. 550.6308, F.S., respecting the limited intertrack wagering license, and reduces the required number of days of sales to eight days from fifteen days. The bill removes the requirement to conduct at least one day of nonwagering thoroughbred racing with a \$250,000 purse per year for two consecutive years.

The bill removes certain restrictions and requirements<sup>77</sup> for intertrack wagering, including the requirements that intertrack wagering must be conducted:

- For up to 21 days in connection with sales;
- Between November 1 and May 8;

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<sup>76</sup> According to information in the latest available 2013-2014 Annual Report from the Division of Pari-Mutuel Wagering, both Jacksonville Kennel Club and Bayard Raceways (St. Johns Greyhound Park) conduct races at Orange Park Kennel Club; H&T Gaming conducts racing at Mardi Gras; Palm Beach Greyhound Racing conducts racing at Palm Beach Kennel Club; Tampa Greyhound conducts races at St. Petersburg Kennel Club (Derby Lane); West Volusia Racing conducts races at Daytona Beach Kennel Club; Dania Summer Ja Alai conducts games at Dania Jai Alai; Tropical Park conducts races at Calder Race Course. See <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2013-2014-83rd-20150114.pdf>, at pp. 24-35 (last accessed Feb. 19, 2016).

<sup>77</sup> See s. 550.6308(1)(a), (b), (c), and (d), F.S.

- Only with the consent of other permit holders that run live racing in the county, between May 9 and October 31; and
- During the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet conducted after May 8 and before November 1.

The bill removes the restriction that intertrack wagering must be conducted by the limited intertrack license permit holder only on thoroughbred racing, unless the consent of all thoroughbred, jai alai, and greyhound racing permit holders in the same county is obtained.

The bill removes the purse pool requirement imposed on the limited intertrack license permit holder at the rate of 2.5 percent for its intertrack wagering on greyhound or jai alai.

**Section 29** of the bill amends s. 551.101, F.S., to allow eligible slot machine facilities to conduct slot machine gaming pursuant to a permit or as otherwise authorized by law. The bill deletes provisions that refer to the eligibility requirements for a slot machine license under the state constitution.

**Section 30** amends the definition of "eligible facility" in s. 551.102, F.S., to specify the facilities that are eligible to conduct slot machine gaming:

- The seven pari-mutuel facilities in Miami-Dade and Broward that existed when the State Constitution was amended and slot machines in the county were approved by referendum, and
- A licensed pari-mutuel facility, if slot machines in the county are approved by voters in a countywide referendum, and if the facility conducted a full schedule of live racing for 2 consecutive years immediately preceding its application.

The bill also makes conforming changes.

**Section 31** of the bill amends s. 551.104, F.S., to disqualify permit holders from receiving a slot machine license, if a permit holder includes, or previously included, an ultimate equitable owner whose permit was voluntarily or involuntarily surrendered, suspended, or revoked by the division within 10 years before the date of the permit holder's application for a slot machine license.

It appears the bill revises criteria for all slot machine licenses, by deleting the requirement that live racing be conducted by a pari-mutuel permit holder in order to maintain eligibility for the slot machine license. The bill also allows a permit to be relocated, with the live racing conducted at a leased facility of a limited thoroughbred permit holder pursuant to s. 550.3345, F.S. See **Section 22** regarding relocation of the limited thoroughbred permit without a referendum.

If the slot machine licensee is not running a full schedule of live racing under its pari-mutuel permit, then it must contribute to a purse pool. In accordance with s. 550.3345, F.S., (**Section 32** of the bill), this purse pool is effective through July 1, 2036 (the term of the proposed 2015 Gaming Compact).

The purse pool (the lesser of \$2 million or 3 percent of the permit holder's prior fiscal year slots revenue) is for the benefit of slot machine licensees that conduct at least 160 days of live thoroughbred racing. There is a dollar-for-dollar credit for payments made to a horsemen's

association under a binding written agreement entered into by the permitholder pursuant to s. 551.104(10), F.S. The requirement in existing law for a thoroughbred racing permitholder to have a horsemen's agreement governing the payment of purses on live thoroughbred racing does not apply to a summer thoroughbred racing permitholder.

The bill deletes the requirement that a quarter horse racing permitholder must have a horsemen's agreement governing the payment of purses on live quarter horse races.

**Section 32** of the bill provides that, effective July 1, 2036, s. 551.104, F.S., is amended to remove the thoroughbred purse pool created in s. 551.104, F.S., in **Section 31** of the bill.

**Section 33** of the bill creates s. 551.1042, F.S., to prohibit the transfer or relocation of slot machine licenses.

**Section 34** of the bill creates s. 551.1043, F.S., to provide an additional slot machine license in a county as defined in s. 125.011,<sup>78</sup> to be awarded by the division for the purpose of enhancing live pari-mutuel activity.

The bill provides a legislative finding, that it is in the state's interest to provide a limited opportunity for the establishment of an additional slot machine license to a pari-mutuel permitholder located within a county as defined in s. 125.011, F.S. Any pari-mutuel permitholder in that county that is not a slot machine licensee may apply for the license, upon payment of a \$2 million nonrefundable application fee.

The fee must be used by the Division of Pari-mutuel Wagering (division) and the Department of Law Enforcement for investigations, the regulation of slot machine gaming, and the enforcement of slot machine gaming under ch. 551, F.S. In the event of a successful award of the license to a licensee, the fee will be credited against the license fee required by s. 551.106, F.S. It appears the reference is to the initial license fee; s. 551.106, F.S., addresses both the fee payable upon application for the initial license and the fee due on each anniversary date of issuance of the initial license.

If there is more than one applicant, the license will be awarded by the division to the applicant that receives the highest score based on:

- The amount of slot machine revenues to be dedicated to the enhancement of pari-mutuel purses; breeder's, stallion, and special racing or player awards to be awarded to pari-mutuel activities conducted pursuant to chapter 550;
- The amount of slot machine revenues to be dedicated to the general promotion of the state's pari-mutuel industry;
- The amount of slot machine revenues to be dedicated to care provided in this state to injured or retired animals, jockeys, or jai alai players;
- The amount by which the proposed slot machine facility will increase tourism, generate jobs, provide revenue to the local economy, and provide revenue to the state. The applicant and its partners shall document their previous experience in constructing premier facilities with high-quality amenities which complement a local tourism industry;

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<sup>78</sup> Currently, the only county that meets the definition in s. 125.011, F.S., is Miami-Dade County.

- The financial history of the applicant and its partners in making capital investments in slot machine gaming and pari-mutuel facilities and its bona fide plan for future community involvement and financial investment;
- The history of investment by the applicant and its partners in the communities in which its previous developments have been located;
- The ability to purchase and maintain a surety bond in an amount established by the division to represent the projected annual revenues generated by the proposed slot machine facility;
- The ability to demonstrate the financial wherewithal to adequately capitalize, develop, construct, maintain, and operate a proposed slot machine facility. The applicant must demonstrate the ability to commit not less than \$100 million for hard costs related to construction and development of the facility, exclusive of the purchase price and costs associated with the acquisition of real property and any impact fees. The applicant must also demonstrate the ability to meet any projected secured and unsecured debt obligations and to complete construction within 2 years after receiving the award of the slot machine license;
- The ability to implement a program to train and employ residents of South Florida to work at the facility and contract with local business owners for goods and services; and
- The ability to generate, with its partners, substantial gross gaming revenue following the award of gaming licenses through a competitive bidding process.

The division must also award additional points for proposed projects located within 0.5 miles of two forms of public transportation and located in a designated community redevelopment area or district.

The bill does not specify the relative value or points that are attributable to the selection criteria. The division must complete its evaluations at least 120 days after the submission of applications and notice its intent to award the license within that time. The time frames in the Administrative Procedure Act do not apply.<sup>79</sup>

Within 30 days after the submission of an application, the division must issue, if necessary, requests for additional information or any notices of deficiency to applicants. Applicants must respond within 15 days, and failure to timely and sufficiently respond or to correct identified deficiencies is grounds for denial of an application.

Any protest of the intent to award the license will be heard by the Division of Administrative Hearings, which shall conduct an administrative hearing before an administrative law judge at least 30 days after the notice of intent to award. The administrative law judge must issue a proposed recommended order at least 30 days after the completion of the final hearing, and the division must issue a final order at least 15 days after receipt of the proposed recommended order.

Any appeal of a license denial must be made to the First District Court of Appeal and must be accompanied by the posting of a supersedeas bond in an amount determined by the division to be equal to the amount of projected annual slot machine revenue to be generated by the successful licensee.

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<sup>79</sup> Section 120.60(1), F.S., provides that a license application must be approved or denied within 90 days of a completed application, or the application will be deemed approved.

The division is authorized to adopt emergency rules, based on a legislative finding that such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to benefit the public.

There is a further legislative finding that the unique nature of the competitive award of the license requires that the department<sup>80</sup> respond as quickly as is practicable to implement s. 551.1043. In adopting the emergency rules, the division is exempted from the requirements of s. 120.54(4)(a), F.S., including publication in writing at the time of, or prior to, its action, the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare, and its reasons for concluding that the procedure used is fair under the circumstances. Emergency rules adopted under this section are exempted from s. 120.54(4)(c), F.S., that provides generally that emergency rules may not be effective for longer than 90 days and may not be renewed. The emergency rules will remain in effect until replaced by other emergency rules or by rules adopted pursuant to the Administrative Procedure Act.

**Section 35** of the bill creates s. 551.1044, F.S., to authorize house banked blackjack table games, with a maximum of 25 such tables at each facility, at:

- The facilities in Miami-Dade and Broward counties that are eligible under the slot machines constitutional amendment where live racing or games were conducted during calendar years 2002 and 2003; and
- The facilities located in a county defined under s. 125.011, F.S., where a full schedule of live horse racing has been conducted for 2 consecutive years.

Wagers may not exceed \$100 for each initial two card wager. Subsequent wagers on splits or double downs are allowed, but may not exceed the initial two card wager. Single side bets of not more than \$5 are also allowed.

**Section 36** of the bill amends s. 551.106, F.S., to remove obsolete language relative to the slot machine license fee for Fiscal Year 2010-2011. The bill also reduces the tax on slot machine revenues from 35 percent to 25 percent.

**Section 37** of the bill amends s. 551.108, F.S., regarding prohibited relationships, to address contracts between slot machine licensees and a manufacturer or distributor. Section 551.108, F.S., currently prohibits contracts that provide for revenue sharing calculated on a percentage of slot machine revenues. The bill exempts contracts related to a progressive system used in conjunction with slot machines to include a revenue sharing provision.

**Section 38** of the bill amends s. 551.114, F.S., to revise the requirement for slot machine licensees to display pari-mutuel races or games and offer the ability to engage in wagering on live, intertrack, and simulcast races conducted or offered to patrons. The requirement is conditioned upon whether the races or games “are available” to the licensee. The term “are available” is not defined.

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<sup>80</sup> Perhaps “division” is intended, as the division is referenced elsewhere.

The bill revises a limitation on the location of slot machine gaming areas, and allows a gaming area to be located anywhere within the property described in the licensee's pari-mutuel permit. Existing law requires that a gaming area be located within the live gaming facility or in an existing building that is contiguous and connected to the facility.

**Section 39** of the bill amends s. 551.116, F.S., to extend the number of hours that a slot machine gaming area may be open on weekdays, from 18 hours to 24 hours, which matches the authorized operating hours on weekends.

**Section 40** of the bill amends s. 551.121, F.S., to allow complimentary or reduced-costs alcoholic beverages to be served to a person playing a slot machine. The bill provides that a slot machine licensee may allow automatic teller machines (ATMs) or similar devices designed to provide credit or dispense cash, to be located in the gaming area.

**Section 41** of the bill amends s. 849.086, F.S., regarding the operation of cardrooms. The bill also revises the hours of operation to 24 hours daily, (previously 8 hours Monday through Friday and 24 hours on Saturday and Sunday), which conforms to the hours that a slot machine gaming area may be open pursuant to s. 551.116, F.S. as amended by **Section 39** of the bill. The bill removes the ability of a permitholder to amend a renewal application for a cardroom.

The bill deletes the 90 percent rule in existing law mandating the minimum number of races that must be conducted by a permitholder. This appears to decouple thoroughbred racing permitholders as well as greyhound racing permitholders, jai alai permitholders, harness racing permitholders, and quarter horse racing permitholders.

The bill provides that a designated player game is not a banking game, and that a designated player is the player in the dealer position seated at a traditional player position who pays winning players and collects from losing players.

The bill defines a designated player game to mean "a game in which the players compare their cards only to the cards of the designated player or to a combination of cards held by the designated player and cards common and available for play by all players."

Regarding the designated player games, the bill provides that:

- All cardroom operators may offer designated player games;
- The cardroom operator may not serve as a designated player, but may collect a rake as posted at the table;
- If there are multiple designated players at a table, the dealer button must be rotated clockwise after each hand; and
- A cardroom operator may not allow a designated player to pay an opposing player who holds a lower ranked hand.

The bill modifies s. 849.086(13), F.S., regarding prohibited activities to address banking game issues and provide that a designated player game shall be deemed a banking game if any of the following elements apply:

- Any designated player is required by the rules of a game or by the rules of a cardroom to cover all wagers posted by opposing players;

- The dealer button remains in a fixed position without being offered for rotation;
- The cardroom, or any cardroom licensee, contracts with or receives compensation other than a posted table rake from any player to participate in any game to serve as a designated player; or
- In any designated player game in which the designated player possesses a higher ranked hand, the designated player is required to pay on an opposing player's wager who holds a lower ranked hand.

**Section 42** of the bill provides that the division must revoke any permit to conduct pari-mutuel wagering if a permit holder has not conducted live events within the 24 months preceding the effective date of the bill, unless the permit is a limited thoroughbred racing permit that was issued under s. 550.3345, F.S. A permit revoked for failure to conduct live events within the 24 months preceding the effective date of the bill may not be reissued.

**Section 43** provides that the provisions of the bill are not severable. If the bill or any of its provisions are determined to be unconstitutional, or the applicability thereof to any person or circumstance is held invalid:

- All other provisions or applications of the provisions of the bill are invalid; and
- The bill is considered never to have become law.

**Section 44** of the bill states that SPB 7072 becomes effective, if SPB 7074, respecting the Gaming Compact between the Seminole Tribe of Florida and the State of Florida, or similar legislation ratifying the Gaming Compact between the Seminole Tribe of Florida and the State of Florida executed by the Governor and the Seminole Tribe of Florida on December 7, 2015 (the 2015 Gaming Compact) becomes law.

In addition, the bill requires approval of the 2015 Gaming Compact by the United States Department of the Interior (Department of the Interior) as required under the Indian Gaming Regulatory Act of 1988. Sections 1, 2, and 3 of SPB 7072 will be effective upon becoming law, and the remaining sections of the SPB will be effective upon the date of publication of the approval of the Gaming Compact by the Department of the Interior in the Federal Register.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

An impact conference will be required to evaluate the provisions of SPB 7072.

Section 35 of the bill creates s. 551.1044, F.S., to authorize house banked blackjack table games at eight facilities in Miami-Dade and Broward counties where the operation of slot machines is authorized. It does not appear that there are any provisions in the bill to tax revenue from house banked blackjack table games as slot machine revenue under ch. 551, F.S., or as cardroom gross receipts pursuant to s. 849.086(13)(a), F.S.

Similar provisions to those in the bill respecting the option granted to greyhound racing permitholders to continue with or discontinue live racing, were evaluated by the Revenue Estimating Conference (REC) on April 16, 2015. The REC assessed the impact of SPB 7088, regarding Gaming,<sup>81</sup> which largely mirrors the provisions in SPB 7072 regarding the ending of live racing requirements for greyhound racing permitholders. The REC reviewed provisions in SPB 7088 that included:

- For greyhound racing permitholders, beginning in Fiscal Year 2015-2016, and each fiscal year thereafter, the removal of minimum live performance requirements associated with:
  - Applications for annual pari-mutuel operating license;
  - The conduct of intertrack wagering;
  - Renewal of annual slot machine license; provided the designated slot machine gaming areas may only be located within the eligible facility for which the division issued the initial annual slot machine license; and
  - Renewal of annual cardroom license; provided such permitholder conducts intertrack wagering on greyhound races that are broadcast, to the extent available, on each day of cardroom operations.
- Authorization for a greyhound racing permitholder to amend its operating license for Fiscal Year 2015-2016, through August 31, 2015.

The REC noted the removal of certain tax credits for greyhound racing permitholders that conduct live racing each state fiscal year:

- Exemption tax credit: The three permitholders (Washington County Kennel Club, Pensacola Greyhound, and Jefferson County Kennel Club) that conducted a full schedule of live racing in 1995, and are closest to another state that authorizes greyhound pari-mutuel wagering, receive a credit of \$500,000; all other greyhound racing permitholders exemption tax credit in the amount of \$360,000;
- Daily license fee credit; and
- The unclaimed pari-mutuel tickets (escheated tickets) credit.<sup>82</sup>

<sup>81</sup> See [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/\\_pdf/page462-466.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/_pdf/page462-466.pdf) (last accessed Feb. 19, 2016).

<sup>82</sup> Section 550.1645, F.S., provides that after one year, the winnings from all unclaimed pari-mutuel tickets become property of the state. Permitholders must pay the unclaimed (escheated) winnings to the state. The funds are deposited into the State School Fund and are used for the maintenance of “public free schools,” as required by FLA. CONST. art. IX, s. 6.

Other changes in SPB 7088 that were noted by the REC:

- Amendment of the effective tax rates for host greyhound racing permitholders to a single rate of 1.28 percent for all handle types;
- Removal of the requirement that a greyhound racing permitholder pay the \$80 daily license fee for each live or simulcast race;
- Elimination of the authorization for greyhound racing permitholders to conduct charity days in addition to their regular racing days.
- Removal of the limit of a maximum of 20 percent of the total number of races on which wagers are accepted by certain greyhound racing permitholders not located as specified in s. 550.615(6), F.S., may receive from locations outside the state.

All estimates include:

- Loss in daily license fees from all greyhound tracks;
- Amending the effective tax rates for host greyhound permitholders to a single tax rate of 1.28 percent for all handle types;
- Adding 60 percent of live and intertrack handle from those that cease or reduce live racing and recapture through intertrack wagering and applying an effective tax rate of 1.28 percent; and
- Removing applicable tax credits that are no longer applicable.

Jefferson Kennel Club was not licensed to operate, and is not included in the estimates.

The REC calculated loss in taxes from six permitholders likely to cease live racing, one that is likely to reduce live races by 50 percent, and six that are likely to reduce live racing by approximately 40 percent. Overall, greyhound racing live racing performances were estimated to be reduced by approximately 42 percent.

The (loss) or gain in tax revenue is projected by the REC as follows (middle estimate):<sup>83</sup>

- Fiscal Year 2015-2016 (\$307,335)
- Fiscal Year 2016-2017 (\$86,092)
- Fiscal Year 2017-2018 \$81,632
- Fiscal Year 2018-2019 \$209,940
- Fiscal Year 2019-2020 \$308,171

#### B. Private Sector Impact:

Pari-mutuel permitholders who hold active, dormant, and inactive permits must evaluate the impact of the provisions of the bill on their operations and business interests.

Greyhound racing permitholders, jai alai permitholders, harness racing permitholders, and quarter horse racing permitholders must determine, on an annual basis, whether to offer live racing or games at their pari-mutuel facilities. Ending the requirement for the offering of live racing or games but continuing to offer slot machines or cardrooms is known as “decoupling.”

<sup>83</sup> See <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/pdf/page462-466.pdf> (last accessed Feb. 19, 2016) at 463-465.

**C. Government Sector Impact:**

The Division of Pari-mutuel Wagering (division) must implement the provisions of the bill, and adopt forms and procedures for the pari-mutuel permit reduction program, and for the issuance of additional slot machine licenses in Miami-Dade and Palm Beach counties.

Recordkeeping and producing documents in response to public records requests for injury reports on racing greyhounds will have an indeterminate impact on the workload of the division, depending on the number of injury reports that are filed. The department estimated the fiscal impact to the state in 2014-2015 from a low of \$60,727 if it collects reports and serves as a repository (one additional staff), to a high of \$425,163 if it reviews the reports, assesses the accuracy of reports, investigates false statements, and pursues administrative action (five additional staff and three additional vehicles).<sup>84</sup>

**VI. Technical Deficiencies:**

Section 18 of the bill creates s. 550.1752, F.S., to establish a pari-mutuel permit reduction program. The program is created to authorize the division to purchase and cancel active pari-mutuel permits. Funding for the program is generated by revenue share payments made by the Seminole Tribe of Florida under the Gaming Compact and received by the State after October 31, 2015. The funding limit for the program is \$20 million, and the provision expires July 1, 2018, unless reenacted. The thoroughbred purse supplement program is created effective July 1, 2018 (*see* Section 19). It appears that ending the pari-mutuel permit reduction program at the end of the Fiscal Year, i.e., on June 30, 2018, would prevent overlap of the two programs and reduce associated accounting expenses. Further, any reenactment of the permit reduction program after July 1, 2018 appears to create multiple demands on the funding source for these programs.

**VII. Related Issues:**

Section 35 of the bill creates s. 551.1044, F.S., to authorize house banked blackjack table games. It does not appear that there are any provisions in the bill to tax revenue from house banked blackjack table games as slot machine revenue under ch. 551, F.S., or as cardroom gross receipts pursuant to s. 849.086(13)(a), F.S.

The bill requires the enactment of SPB 7074, respecting the Gaming Compact between the Seminole Tribe of Florida and the State of Florida, or similar legislation ratifying the Gaming Compact between the Seminole Tribe of Florida and the State of Florida executed by the Governor and the Seminole Tribe of Florida on December 7, 2015 (the 2015 Gaming Compact).

The bill includes provisions for slot machines in any county in which slot machines are approved by voters in a countywide referendum, and if the pari-mutuel facility conducted a full schedule of live racing for 2 consecutive years immediately preceding its application. The bill provides for issuance of an additional slot machine license in a county as defined in s. 125.011, F.S. The bill includes provisions for games that are not addressed in the 2010 Gaming Compact or the

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<sup>84</sup> See 2015 Department of Business and Professional Regulation Legislative Bill Analysis for Senate Bill 2 (January 15, 2015) (on file with Senate Committee on Regulated Industries).

proposed 2015 Gaming Compact. These provisions may affect revenue-sharing payments by the Seminole Tribe of Florida upon becoming law.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 24.103, 24.105, 24.112, 550.002, 550.01215, 550.0251, 550.054, 550.0951, 550.09511, 550.09512, 550.09514, 550.09515, 550.1625, 550.1648, 550.26165, 550.3345, 550.3551, 550.375, 550.475, 550.5251, 550.615, 550.6305, 550.6308, 551.101, 551.102, 551.104, 551.106, 551.108, 551.114, 551.116, 551.121, and 849.086.

This bill creates the following sections of the Florida Statutes: 550.1751, 550.1752, 550.2416, 551.1042, 551.1043, and 551.1044.

This bill repeals the following sections of the Florida Statutes: 550.0555, 550.0745, and 550.1647.

**IX. Additional Information:**

A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.