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.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL:	PCS/SB 622 (707772)
INTRODUCER:	Regulated Industries Committee and Senator Jones
SUBJECT:	Gaming
DATE:	March 20, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington/ Oxamendi	Imhof	RI	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

Indian Gaming Compact - The proposed committee substitute (PCS) provides that it is the intent of the Legislature to review any tribal-state gaming compact executed between the Governor and the Tribe, and to ratify the compact if it is in the best interests of the people of the State of Florida.

The PCS expressly disapproves and voids the Indian gaming compact executed by the Governor and the Seminole Tribe of Florida on August 28 and 31, 2009, respectively.

The PCS designates the Governor as the state officer responsible for negotiating and executing, on behalf of the state, tribal-state gaming compacts with federally recognized Indian tribes located within the state for the purpose of authorizing Class III games in this state. The compact must be conditioned upon ratification by the Legislature. The PCS does not specify the terms or provisions that must be included, or may not be included, in a valid tribal-state compact.

Pari-Mutual Gaming - The PCS makes all of the pari-mutuel provisions that were enacted in the 2009 Regular Session effective on the date that this PCS becomes a law. These provision would have taken effect only if a compact that was consistent with the act was ratified by the Legislature, and approved (or "deemed approved") by the Department of the Interior.

Effective Date – The PCS is effective upon becoming a law.

II. Present Situation:

The Indian Gaming Regulatory Act (IGRA) – In 1988, Congress enacted the Indian Gaming Regulatory Act or "IGRA."[1] The Act divides gaming into three classes:

- "Class I gaming" means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations.[2]
- "Class II gaming" includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo.[3] Class II gaming may also include certain non-banked card games if permitted by state law or not explicitly prohibited by the laws of the state but the card games must be played in conformity with the laws of the state. [4] A tribe may conduct Class II gaming if:
  - the state in which the tribe is located permits such gaming for any purpose by any person, organization or entity; and
  - the governing body of the tribe adopts a gaming ordinance which is approved by the Chairman of the National Indian Gaming Commission.[5]
- "Class III gaming" 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, and pari-mutuel wagering.[6]

Regulation under IGRA is dependent upon the type of gaming involved. Class I gaming is left to the tribes.[7] Class II gaming is regulated by the tribe with oversight by the National Indian Gaming Commission.[8] Class III gaming permits a regulatory role for the state by providing for a tribal-state compact.[9]

IGRA provides that certain conditions must be met before an Indian tribe may lawfully conduct Class III gaming. First, the particular form of Class III gaming that the tribe wishes to conduct must be permitted in the state in which the tribe is located. Second, the tribe must have adopted a tribal gaming ordinance that has been approved by the Indian Gaming Commission or its chairman. Third, the tribe and the state must have negotiated a compact that has been approved by the Secretary of the United States Department of the Interior and is in effect.[10]

The Voided Seminole Gaming Compact – On November 14, 2007, pursuant to IGRA, the Seminole Tribe and Governor Crist entered into a Tribal-State gaming compact with a term of 25 years. This compact authorized the Tribe to operate Class III games at its seven existing gaming facilities. Refer to compact comparison chart on page 5 of this analysis for more detail.

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[1] Indian Gaming Regulatory Act of 1988, 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*.
[2] 25 U.S.C. s. 2703(6).
[3] 25 U.S.C. s. 2703(7).
[4] 25 U.S.C. s. 2703(7)(A)(ii).
[5] 25 U.S.C. s. 2710(b)(1).
[6] 25 U.S.C. s. 2703(8).
[7] 25 U.S.C. s. 2710(a)(1).
[8] 25 U.S.C. s. 2710(a)(2).
[9] 25 U.S.C. s. 2710(d).
[10] 25 U.S.C. s. 2710(d).

The compact was challenged by the Florida House of Representatives and Marco Rubio, individually and in his capacity as Speaker of the Florida House of Representatives. The Florida House of Representatives maintained that the Governor had encroached on the powers of the Legislature and violated the Separation of Powers doctrine under Art. II, s. 3, Florida Constitution. IGRA is silent as to who should negotiate on behalf of the state. The governor relied on Art. IV, s. 1 of the State Constitution, which states that the governor can ". . . transact all necessary business with the officers of government" which, according to the governor, included negotiating a compact.[11]

The Florida Supreme Court, declining to decide if the governor had the authority to negotiate a compact under IGRA,[12] stated "that the clause does not authorize the governor to execute compacts contrary to the expressed public policy of the state or to create exceptions to the law."[13] The court noted that, while it is undisputed that Florida allows some gaming that is considered to be Class III gaming under the Indian Gaming Regulatory Act, "Florida law prohibits banked card games," and "blackjack, baccarat, and chemin de fer are banked card games. They are therefore illegal in Florida."[14] The court held that:

> "the Governor's execution of a compact authorizing types of gaming that are prohibited under Florida law violates the separation of powers. The Governor has no authority to change or amend state law. Such power falls exclusively to the Legislature. Therefore, we hold that the Governor lacked authority to bind the State to a compact that violates Florida law as this compact does."

Chapter 2009-170, L.O.F., and Indian Gaming - During the 2009 regular legislative session, the Legislature enacted ch. 2009-170, L.O.F., ("act")[15] to provide statutory authority to the Governor to negotiate and execute a gaming compact with the Tribe for Class III gaming and set forth requirements for the compact. In regards to the Indian gaming compact, the act consists of ss. 285.710 and 285.711, F.S.

The act expressly provides that the compact executed by the Governor and the Tribe in November 2007[16] is not approved or ratified and is void and not in effect.[17] All payments made to the State by the tribe under the terms of the voided compact, however, are to be retained by

[11] *Id.*
[12] *Florida House of Representatives v. Crist*, 990 So.2d 1035, 1046 (Fla. 2008).
[13] *Id.* at 1047.
[14] *Id.* at 1039.
[15] Codified at pt. II of ch. 285, ss. 285.710 and 285.711, F.S. ., CS/CS/SB 788, 2nd Eng., by the Policy & Steering Committee on Ways and Means; the Regulated Industries Committee and Senators Jones and King passed the Senate 31-9 and passed the House of Representatives 82-35. The bill was presented to the Governor June 4, 2009, and was approved by the Governor June 15, 2009.
[16] The November 2007 compact was also invalidated by the Florida Supreme Court in the case of *Florida House of Representatives, et al., v. Crist*.
[17] Section 285.710(2), F.S.

the state.[18] Payments made under the voided compact through FY 2008-09 totaled $137.5 million.[19]

Section 285.710, F.S., authorizes the Governor to enter into an Indian Gaming compact with the Seminole Indian Tribe of Florida (Tribe) for the purpose of authorizing Class III gaming[20] on the Tribe's lands. The compact must be in "the form substantially as follows" in s. 285.711, F.S. This authority expired at the end of the day on August 31, 2009.[21]

Section 285.710, F.S., also:

- Requires the Governor to provide a copy of the executed compact to both houses of the Legislature before or simultaneous to its submission to the Secretary of Interior;
- Requires that the negotiated compact be ratified by the Legislature;
- Provides legislative intent to review the compact within 5 years in order to consider the authorization of additional Class III games;
- Requires ratification of amendments to the compact if they alter the provisions related to covered games, the amount of revenue sharing payments, suspension or reduction of payments, or exclusivity;
- Provides that the compact is void if any provision of the compact relating to covered games, payments, suspension or reduction in payments, or exclusivity is held by a court of competent jurisdiction or by the Department of Interior to be invalid;
- Requires the Governor to preserve all documents related to the intent or interpretation of the compact and keep such records for the term of the compact;
- Designates the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation as the agency with the authority to monitor the Tribe's compliance with the compact;
- Provides that revenue sharing payments from the Tribe must be deposited into the Educational Enhancement Trust Fund; and
- Authorizes the Governor to negotiate agreements, which would be subject to legislative ratification, with the Indian tribes for all taxes, including sales taxes.

Section 285.711, F.S., provides the form of the compact, specifies the minimum requirements and standards for a valid compact, provides definitions, and provides a 15-year term for the compact. Refer to compact comparison chart on page 5 of this analysis for more detail.

The August 31, 2009 Proposed Compact – Before the expiration of the Governor's authority granted under the act, on August 31, 2009, the Governor and Seminole Tribe executed a compact that was not based on the compact specified in the act. Refer to compact comparison chart on page 5 of this analysis for more detail.

[18] Section 285.710(14), F.S., specifically provides that acceptance and appropriation of funds under the voided compact does not legitimize, validate, or otherwise ratify any previous compact or the operation of Class II games by the Tribe.
[19] According to the Revenue Estimating Conference, assuming that monthly payments of $12.5 million will continue, it is expected that by the end of October 2009, there will be $187.5 million in escrow.
[20] Section 285.710(1), F.S. provides that terms used in s. 285.710, F.S., have the same meaning as those defined in s. 285.711, F.S. Section 285.711, F.S., defines "Class III gaming" to mean ". . . the forms of Class III gaming defined in 25 U.S.C. s. 2703(8) and by the regulations of the National Indian Gaming Commission in effect on January 1, 2009."
[21] Section 285.710(10), F.S., provides that this authority ". . . expires at 11:59 p.m. on August 31, 2009."

Compact Comparison - The following table reflects the similarities and differences among the November 14, 2007, voided compact, the compact authorized by the act, and the August 31, 2009 proposed compact:

COMPACT COMPARISON			
ISSUE	**November 14, 2007 Voided Compact**	**CS/CS/SB 788, 2nd Eng.**	**August 31, 2009 Proposed Compact**
Term	25 years *(Page 34)*	15 years *(Lines 1459-1464)*	20 years *(Page 43)*
Revenue Share Percentages	$25M a month of the first Revenue Sharing Cycle (RSC or year) toward the guaranteed annual minimum of $100 million for a total of $75 million the first year. Remaining $25M would be paid in equal installments over second RSC. $125M in equal installments over 12 months in addition to the carry over payments from the first year for a total of $150M in the second year. For the third RSC, $150M if the Revenue Share calculated for that cycle is less that the guaranteed minimum payment. For the 3rd - 25th RSC: Up to $2B, 10% $2 – $2.5B, 12% $2.5 – $3B, 15% $3 – $4 B, 20% $4 – $4.5B, 22.5% $4.5 B, 25% *(Appendix A)*	0-2.5B, 12% net win $2-2.5 B, 12% net win $2.5-3 B, 15% net win $3-4 B, 20% net win $4-4.5 B, 22.5% net win More than $4.5 B, 25% net win *(Lines1080-1109)*	First 30 months: the Tribe pays $12.5M per month ($150M per year). After the first 30 months, the calculation of the revenue sharing percentage is divided into two separate categories: One category for the 3 Broward facilities and one category for the 4 facilities outside Broward. The net win and the applicable percentages are calculated separately for each category. The percentages for both categories are identical as follows: Beginning after 30 months: 12% ≤ $1B 15% > $1B - 1.5B 17.5% > $1.5B - 1.75B 20% > $1.75B - 2B 22.5% > $2B - 2.25B 25% > $2.25B" *(p. 28-31)*
"Net win" definition	"Total receipts from the play of all covered games less all prize payouts and participation fees." *(Page 6)*	Gross gaming revenue = "difference between gaming wins and losses, before deducting costs and expenses." *(Lines 78-81)*	"Total receipts from the play of all Covered Games which does not include free play or promotional credits issued by the Tribe, less all prize payouts." *(p.8)*
Guaranteed Minimum	$100 million. *(Appendix A)*	$150 million *(Lines 1072-1079)*	$150 million *(p.7)*
Payments to offset impacts on local gov't	Not addressed.	Tribe pays an additional amount equal to 3 percent of revenue share. *(p. 27-28)*	The Legislature must appropriate 3 percent of the revenue sharing payments for the affected local governments. *(p.27)*

Status of payments made under the voided compact.	State keeps.	State keeps. Compact voided but payments are deemed forfeited to the state. *(Lines 1178-1184)*	All funds paid by the Tribe to the State under the 2007 compact are transferred to the EETF in 10 days from effective date. *(p.46)*
Covered Class III	Slot machines; charity poker; legally authorized Class II games; banked card games, including blackjack, chemin de fer, and baccarat. *(Pages 3-4)* * High stakes charity poker games also permitted, but 70% of net poker income must go to charity (limit 6 tournaments per year.) *(Page 14)*	Class III Slot Machines, No-limit Poker at all 7 Tribal facilities and Banked Card Games in Broward and Hillsborough only. *(Lines 419-448)*	Class III Slot Machines, banked card games, and "raffles and drawings" at all 7 Tribal facilities. *(p.3)* No-limit Poker not referenced.
Exclusivity	Only the Tribe can conduct slot machines outside of Dade and Broward Counties. Banked card games, including blackjack, chemin de fer, and baccarat at all seven tribal facilities. *(Page 23 and pages 25-27)*	Tribe will have exclusivity of class III slot machines at Tribal facilities outside of Broward & Miami-Dade; Tribe will have exclusive rights to offer banked card games (blackjack, chemin de fer and baccarat) in Broward and Hillsborough. *(Lines 445-448)*	Tribe will have exclusivity of Class III slot machines at tribal facilities outside of existing 7 pari-mutuel facilities in Broward & Miami-Dade and Hialeah, but license may not be transferred or otherwise used to move or operate slot machines at a location not presently authorized; Tribe will have exclusive state-wide rights to offer banked card games (blackjack, chemin de fer and baccarat) at its 7 facilities (allowing banked card games will result in reduction or cessation of payments). Broward net win is excluded if the play of Class III or casino style games is allowed at "any location in Dade or Broward (other than the existing Hialeah Park facility)" that is not presently licensed for the play of such games at such locations. (See Comment) PMW's outside of Dade and Broward that are licensed as of April 1, 2009, are limited to offering not more than 300 Historic Racing Machines and Electronic Bingo at each facility. (The requirements for these machines are specified in the compact). *(p. 34-36)*
Revenue Sharing Reductions/ Expansion Limitations	Payments cease if: *Additional Class III games are allowed (electronically-assisted bingo or pull-tab games, video lottery	No reduction of payments unless additional class III games are authorized AND net win fails to reach $1.37 billion; Reduction based on proportion of net win	Tribe may cease payments if state law is amended <u>or interpreted</u> to allow the expansion of Class III or other casino-style gaming (including but not limited to

	terminals) and are offered for public or private use; No reduction for compact with another Florida Tribe. *Pro rata reduction for occurrences outside of Tribe's control, including acts of God and terrorism. Tribe may reduce revenue share if additional class III gaming is authorized in Miami-Dade and Broward Counties AND net win from all class III games drops below $1.37. *(Pages 25-27)*	below 1.37B *(Lines 1190-1208)* No reduction for compact with another Florida Tribe. *(Lines 1211-1215)* No reduction for additional slot machines gaming in Dade or Broward. *(Lines 1220-1224)* No reduction for historic racing machines, electronic bingo machines, and PMW wagering at license PMW facilities. *(Lines 1225-1229)* No reduction for illegal gaming or gaming of unsettled legality. *(Lines 1230-1233)* Pro rata reduction for occurrences outside of Tribe's control, including acts of God and terrorism. *(Lines 1506 -1520)*	electronically assisted bingo or pull-tab games or VLTs). *(p.34)* <u>Exceptions to general rule of exclusivity: *(p.35)*</u> Slot machines only permitted at the 7 presently licensed PMW facilities in Dade and Broward, including Hialeah. However the licenses cannot be moved to allow slot machine gaming at locations not presently authorized. If Dade and Broward PMW's are permitted to offer "any additional type of game", the net win from Broward results in 50% of that reduction in annual net win if the net win is less than the net-win during the last 12 months before the expansion. Any reduction ends when net win increases or equals the amount before the expansion. Tribe excludes net win from Broward County if "any location other than the existing Hialeah Park facility" is authorized to offer the play of Class III or casino-style games that are not presently licensed for such games at such locations and were not in play as of January 1, 2009. 300 historic racing and electronic bingo machines *(definition on p.7)* may be operated at pari-mutuel facilities licensed as of April 1, 2009 located outside Broward or Dade County.
Status of current banked card Games.	Implicitly authorized.	Explicitly not validated. Tribe will remove banked card games at facilities not authorized for such games within 90 days of execution. *(Lines 711-716)*	Not referenced.
Legislative approval of negotiated compact.	Not specified.	Legislative ratification required. *(Lines 1453-1454)*	Legislative ratification required. *(p.43)*
Legislative approval of	*Not specified. *Parties can amend any	Legislative approval is required if amendments are inconsistent with	Legislative ratification required if amendment relates to covered

compact amendments	written agreement and approval of DOI Secretary required. *(Page 34)*	terms of statute, or alters covered games, revenue sharing,, suspension or reduction of payments, or exclusivity. *(Lines 1468-1478)*	games, amount of revenue sharing, suspension or reductions in payments or exclusivity. *(p. 43)* Tribe gets more favorable provisions from compact with another tribe. *(p.44)* Tribe and DOR must enter into a Memorandum of Understanding regarding the scope of written reports that the Tribe is required to maintain regarding investigations of violation and any action taken. *(p. 44)*.
Effect of changes to slot machine laws	Tribe may use electronic payment systems if permitted in state for slot machines. *(Page 4)*	Tribe may use electronic payment systems if permitted in state for slot machines. *(Lines 439-443)*	Tribe may use electronic payment systems if permitted in state for slot machines. *(p.4)*
Sovereign Immunity and Insurance	*Limited waiver of $100,000 per person and $200,000 per incident. *Insurance not referenced. *(Page 16)*	*Limited waiver of $500,000 per person and $1 million per incident. *Requires insurance of $1 million per occurrence and $10 million in the aggregate. *(Lines 761-776)*	Sovereign Immunity Waiver and insurance up to the sovereign immunity limits for the state: $100,000 per person and $200,000 per incident. Tribe has discretion to consider private bills for claims in excess of the waiver limits. *(p.19)*
Patron Tort Claims	* After the Tribe is notified of the injury or illness, the Tribe will provide a claim form to the patron. *Patron must report claim on form provided by the Tribe no later than six months after the incident or the claim forever barred. *(Pages 15-17)*	Patron can go directly to court. Patron must give Tribe written notice in a reasonable and timely manner. Tribe must respond in 10 days with claim form. Four year statute of limitations for tort claims. *(Lines 750-760)*	Four year statute of limitations for tort claims. Patron must give the Tribe written notice of the injury or incident within 3 years or claim barred. Tribe has 30 days to respond with a claim form that the patron must return in a reasonable period of time, but within 3 years of the injury or incident. If not resolved, patron may sue in Broward County. *(p. 16-18)*
State enforcement agency	State Compliance Agency (SCA) not specified. *(Page 7)*	Division of Pari-mutuel Wagering *(Lines 510-514)*	Department of Revenue. *(p.9)*
Inspections	*Annual independent financial audit (paid by Tribe). *Public areas: no prior notice. *Non-public areas: Two hours notice. *Random inspections of covered games (with prior or	*Annual independent financial audit (paid by Tribe). *Public and Non-public areas: no notice or concurrent notice. *No limits on the number of random inspections. *Public area inspection during business hours.	*Annual independent financial audit (paid by Tribe). * Inspection of public areas: no notice needed. *Inspection of non-public areas: 2 hours notice. *(p.24)* *Public area inspection during business hours.

	concurrent notice) up to 4 times per year during normal business hours. *One annual slot machine compliance audit. *(Pages 11, and 19-21)*	*No reference to when random inspection may be conducted. *Annual slot machine compliance audit. *(Lines 875-968)*	*Limited to 6 annual random inspections of any covered game during regular business hours with concurrent or prior notice. *(p.23)* *One annual slot machine compliance audit.
Minimum Age to play covered games.	*21 years of age to play. *18 years of age for entry to casino floor. *(Page 13)*	21 years of age to play and for entry on casino floor *(Lines679-680 and 693-695)*.	*21 years of age to play. *(p.15)* *No referenced age limit for entry to casino floor.
Compulsive Gambling	Training program for employees, education of patrons, and will keep list of voluntary excluded patrons. *(Pages 9-11)*	Same as under voided compact plus $250,000 per facility annual donation. *(Lines 591-593)*	Same as voided compact plus $250,000 per facility annual payment as "assignee of the state." *(p.12&34)*
Smoking	Smoking permitted but Tribe to provide smoke-free and reduced smoke environment. Provides for vent tables and ventilation systems. *(Pages 36-37)*	Same as in voided compact; smoking permitted but Tribe to provide smoke free and reduced smoke environment, including vented tables and ventilation systems. *(Lines 1521-1537)*	Same as in voided compact; smoking permitted but Tribe to provide smoke free and reduced smoke environment, including vented tables and ventilation systems. *(p.45)*
Dispute Resolution for state and Tribe.	Mediation, and nonbinding arbitration for disputes by Tribe against state. *(Pages 28-31)*	Mediation, then nonbinding arbitration. *(Lines 1266-1388)*	Mediation and non-binding arbitration, minus our specific procedures.*(p.39)*
Allocation of Compact Revenue	*Governor recommends that 95% of payments go to the EETF and 5% to off-set local impacts.* *(Page 24)*	Revenue sharing payments must be deposited into Educational Enhancement Trust Fund. *(Lines 250-260 and 1151-1158)*	Revenue sharing payments must be deposited into Educational Enhancement Trust Fund. *(p.27)*
Computer Reporting and Auditing System	Not Referenced.	Tribe must have central computerized reporting and auditing system. *(Lines 969-993)*	Not referenced.
Medical Profession-als	Not Referenced.	Tribe must employ/authorize only licensed medical professional. *(Lines 830-831)*	Not referenced.
Access by Emergency Services	Tribe must allow unimpeded access by emergency medical services. *(Page 18)*	Tribe must allow unimpeded access by emergency medical services. *(Lines 832-833)*	Tribe must allow unimpeded access by emergency medical services. *(p. 20)*
Meet Min. Environment al Reqs.	Not Referenced.	Tribe must ensure, at minimum, that the environmental requirements of its federal permits comply with the established state standards. *(Lines 834-837)*	Not Referenced.
Spending	Not Referenced.	The Tribe must use its best efforts	Not referenced.

Tribal Revenue in State		to spend its revenue in the state and acquire goods and services from Florida-based vendors. *(Lines 1558-1561)*	
Dispute Process for Employees	The Tribe would maintain employment standards comparable to state and federal standards. *(Pages 36-37)*	Same as in Voided compact in which the Tribe would maintain employment standards comparable to state and federal standards. Plus the Tribe's employee dispute process must permit the employee to be represented by an attorney or other authorized representative, and must allow language interpreters. *(Lines 1542-1557)*	Compact references the Tribe's employee dispute resolution process. *(p.16)*
Tax Agreements	Not Provided.	Bill authorized the Governor to negotiate tax agreements. *(Lines 277-311)*	Compact does not reference any agreement on payment of taxes.

Pari-mutuel Wagering – Pari-mutuel wagering is a:

> system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes.[22]

The regulation of the pari-mutuel industry is governed by ch. 550, F.S., and is administered by the Division of Pari-Mutuel Wagering (division) within the Department of Business and Professional Regulation (department).

Types of Pari-mutuels - The pari-mutuel industry in Florida is made up of greyhound racing, different types of horseracing , and jai alai.[23] There are twenty-seven pari-mutuel facilities currently in operation. The industry consists of sixteen greyhound tracks, six jai alai frontons, three thoroughbred tracks, one harness track, and one quarter horse track. Twenty-three of the facilities have cardrooms[24] and five facilities have slot machines.[25]

Greyhound Racing - Greyhound racing was authorized in Florida in 1931.[26] Betting is permitted on the outcome of the races around an oval track. The greyhounds typically chase a "lure," which is usually a mechanical hare or rabbit. "Racing greyhounds" are those which are

[22] Section 550.002(22), F.S.
[23] "Jai alai" or "pelota" means a ball game of Spanish origin played on a court with three walls. *See*, s. 550.002(18), F.S.
[24] *See* http://www.myflorida.com/dbpr/pmw/track.html (Last visited March 5, 2010).
[25] Gulfstream Park, Mardi Gras Racetrack and Gaming Center, Flagler Dog Track and Magic City Casino, Calder/Tropical, and The Isle Casino and Racing at Pompano Park have slot machine gaming. *See* http://www.myflorida.com/dbpr/pmw/track.html (Last visited March 5, 2010).
[26] *Deregulation of Intertrack and Simulcast Wagering at Florida's Pari-Mutuel Facilities,* Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.

bred, raised, or trained to be used in racing at a pari-mutuel facility and are registered with the National Greyhound Association.[27] According to the Greyhound Racing Association, the first Florida track:

> was built in 1922 in an area called Humbuggus, which was later renamed Hialeah and became better known for Thoroughbred racing. The key to success was night racing, which began in 1925. After establishing that track, Smith moved around the country, helping set up tracks in Erlanger, Kentucky; New Orleans; Milwaukee, Wisconsin; Butte, Montana; and East St. Louis once more. . . . The sport had its fastest growth in Florida. The Hialeah operation closed down in 1926, but other dog racing tracks were established at St. Petersburg in 1925, Miami in 1926, Sanford-Orlando and Miami Beach in 1927. The West Flagler Kennel Club became Miami's second track in 1930 and a track opened at Tampa in 1932.

Jai Alai - Jai alai is a game originating from the Basque region in Spain,[28] that is played in a fronton,[29] and in which a ball is hurled through a three-walled court and points are assessed based on legal throws and catches. The ball is caught and thrown with a "cesta," a long, curved wicker scoop strapped to one arm. "Jai-alai came to Cuba from Spain in 1898, and was successfully introduced as a professional game at the Miami Fronton in 1926[30]." Jai alai was first permitted in Florida in 1935 and it is the only state where the game is currently played. Though the birthplace of jai alai is the Basque Country of Spain, there are more jai-alai frontons in Florida than any place in the world.[31]

Horse Racing - Horse racing, like greyhound racing, was also authorized in the State of Florida in 1931.[32] Currently, the state authorizes three forms of horse racing classes for betting: (1) thoroughbred racing, (2) harness racing; and (3) quarter horse racing.

Thoroughbred Racing - Thoroughbred racing involves only horses specially bred and registered by certain bloodlines:

> The Thoroughbred's ancestry traces back more than 300 years to three foundation stallions – the Darley Arabian, the Godolphin Arabian and the Byerly Turk. Named for their respective owners – Thomas Darley, Lord Godolphin and Captain Robert Byerley (the second "e" was accidentally dropped) – these stallions were imported into England in the late 1600s and early 1700s and bred to the stronger but less precocious native mares. . . .The result was a horse that could carry weight with sustained speed over extended distances, qualities that brought a new dimension to the burgeoning sport of

[27] Section 550.002(29), F.S.
[28] "The game is called "pelota vasca" in Spain but the Western Hemisphere name of Jai-alai, which is Basque for "merry festival", was given when it was introduced in Cuba. This was due to the fact that this game was played at festivals or fiestas in Spain's Pyrenees Mountains for hundreds of years. The game was then played in the open air with the walls of churches being used to bounce the ball on." *See*, http://www.jai-alai.info/ and http://www.fla-gaming.com/history.htm (Last visited March 8, 2010).
[29] "A building or enclosure that contains a playing court with three walls designed and constructed for playing the sport of Jai Alai or pelota." *See*, s.550.002(10), F.S.
[30] *See* http://www.fla-gaming.com/history.htm (Last visited March 8, 2010).
[31] *Id*.
[32] *Infra* at n. 33.

> horse racing. . . . Although there are records of horse racing on Long Island as far back as 1665, the introduction of organized Thoroughbred racing to North America is traditionally credited to Gov. Samuel Ogle of Maryland, who first staged a Thoroughbred race "in the English style" at Annapolis in 1745.[33]

The thoroughbred industry is highly regulated and specifically overseen by national and international governing agencies. Thoroughbred horses are defined as:

> "a purebred horse whose ancestry can be traced back to one of three foundation sires and whose pedigree is registered in the American Stud Book or in a foreign stud book that is recognized by the Jockey Club and the International Stud Book Committee.[34]

Pari-mutuel betting is allowed on the outcome of a thoroughbred race which runs typically from one mile to one and one-quarter of a mile.

Harness Racing - Harness racing uses standardbred horses, which are a "pacing or trotting horse … that has been registered as a standardbred by the United States Trotting Association" (USTA) or by a foreign registry whose stud book is recognized by the USTA.[35] Currently, only the Pompano Park facility in Florida has a permit for harness racing.

Quarter Horse Racing - Quarter horse racing is currently legal in the state. According to the American Quarter Horse Association, the

> American Quarter Horse originated in 17th century Colonial America. After working all day, colonists would match their horses down the quarter mile streets in the towns. . . . From this descends the modern sport of American Quarter Horse racing, a true American sport. . . . American Quarter Horses are the fastest horses in the world, and one of the fastest animals. Racing at speeds up to 55 mph, they can cover a quarter-mile in less than 21 seconds, starting from a flat-footed standstill.[36]"

Quarter horses are defined in statute as those developed in the western United States which are capable of high speed for a short distance.[37] They are registered with the American Quarter Horse Association. Quarter horse racing is over a much shorter distance than either the thoroughbred or harness race classes. Only one quarter horse permit is currently in operation at Hialeah Park.

Chapter 2009-170, L.O.F., and Pari-Mutuel Wagering - The act made numerous conditional changes to the pari-mutuel statutes. These changes were conditional on the execution of a gaming compact between the Tribe and the state, ratification of such compact by the Legislature, and approval of the compact (or it being "deemed approved") by the Department of the

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[33] *Thoroughly Thoroughbred,* National Thoroughbred Racing Association. *See* http://www.jockeyclub.com/pdfs/thoroughly_thoroughbred.pdf (Last visited March 8, 2010).
[34] Section 550.002(35), F.S.
[35] Section 550.002(33), F.S.
[36] AQHA Racing First-Timers Guide.
[37] Section 550.002(28), F.S.

Interior.[38] If these conditions were not met, the pari-mutuel provisions of the act would not take effect. The current standards, as well as those changes that would have become effective upon final approval of a gaming compact authorized by the act, are outlined below.

Permits and Licensure - The first step in conducting pari-mutuel operations is to apply to the division for a permit pursuant to s. 550.054, F.S. Applicants for greyhound, jai alai, thoroughbred, and harness horse racing permits (but not applicants for quarterhorse permits) must complete an application specifying the name of the permitholder, the location of the facility, the type of pari-mutuel activity desired to be conducted, and a statement showing qualifications of the applicant. The division must grant or deny a permit within 120 days after receipt of a completed application.[39] If the division grants the permit, the board of county commissioners must order an election in the county to decide whether the permit will be approved by the electorate, as provided in s. 550.0651, F.S. All elections must be held within 90 days and not less than 21 days after the time of presenting the application to the board.[40] If a permit is granted an application for an election is not made within 6 months, the permit is void and must be canceled by the division.[41]

One important limitation on permit approval is the location of the applicant's pari-mutuel facility in relation to other existing pari-mutuel facilities. An application for a permit to conduct thoroughbred racing, harness racing, or dog racing may not be considered or approved at any location that is within 100 miles of an existing pari-mutuel facility. A shorter distance is authorized for jai alai permit applications. An application for a jai alai permit may not be approved if the facility is within 50 miles of an existing pari-mutuel facility.[42]

If a permitholder has not completed construction of at least 50 percent of the facilities necessary to conduct the pari-mutuel operations within 12 months after county approval, the division is required to revoke the permit. The division is authorized to grant one extension for up to 12 months for good cause.[43]

After a permit has been issued by the division, and after the permit has been approved by election, the division may issue the permitholder an annual license to conduct pari-mutuel activities.[44]

The requirements of s. 550.054, F.S., are inapplicable to applicants for quarter horse racing.[45] Permit applicants for quarter horse racing must follow the provisions of s. 550.334, F.S. Under this section, the applicant must demonstrate that the location for the permit is available for quarter horse racing and that the applicant has the financial ability to satisfy the reasonably anticipated operational expenses of the first racing year following the issuance of the permit. If the facility is already built, then the applicant must provide a statement and supporting evidence

[38] Lines 3009-3019 of the CS for /CS for SB for 788, 2nd engrossed.
[39] Section 550.054(1), F.S.
[40] Section 550.0651(2), F.S.
[41] Section 550.0651(3), F.S.
[42] Section 550.054(2), F.S.
[43] Section 550.054(10), F.S.
[44] Section 550.0115, F.S.
[45] Section 550.334(4), F.S.

to the division that the location will be used for quarter horse racing within one year after the date it is granted. The division is required to disapprove the application if it does not meet the requirements of ch. 550, F.S. Further, if a favorable referendum on a pari-mutuel facility has not been held in the county, then a referendum must be ratified by the county electors allowing quarter horse racing in the county.

As noted above, quarter horse permits are not subject to s. 550.054, F.S. As a result, quarter horse permitholders are not subject to the mileage restrictions imposed upon other permit types so quarter horse permitholders can be located near other pari-mutuel permitholders.

Issuance of a permit does not authorize the permitholder to conduct races or performances. Once all requirements for a permit have been met and the permit issued, a license to conduct performances must be applied for by the permitholder. Applications to conduct performances must be applied for annually between December 15 and January 4. Permitholders apply for performance dates in the next fiscal year. The permitholder must specify the number, dates, and starting times of all performances. In addition, each permitholder who operates a cardroom must specify the dates and periods of operation for the cardroom.[46] The division is required to issue each license by March 15,[47] except for thoroughbred permits, which must be issued a month earlier on February 15 each year.

If the pari-mutuel provisions of ch. 2009-170, L.O.F., had taken effect, the act would have deleted the provision that exempts quarter horse applicants from s. 550.054, F.S.,[48] thereby making them subject to the same application process, the same mileage restrictions for horseracing and dog-racing pari-mutuel facilities,[49] and the timeframe limitations on commencement of construction of pari-mutuel facilities.[50] The act also would have deleted out-of-date provisions in the quarter horse licensing section[51] that pertain to quarter horse permits that have not conducted activity before July, 1990.

Full Schedule of Live Racing - Section 550.002(11), F.S., defines what constitutes a full schedule of live racing. Depending upon the permit type, there may be a different requirement for a full schedule of live racing. Typically, a full schedule of live racing or games requires the conduct of a combination of evening or matinee "performances," which is defined to mean "a series of events, races, or games performed consecutively under a single admission charge."[52] 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 facility.[53]

[46] Section 550.01215(1), F.S.
[47] Section 550.01215(2), F.S.
[48] *See* s. 14 of ch. 2009-170, L.O.F.
[49] Section 550.054(2), F.S., reads in part "an application may not be considered, nor may a permit be issued by the division or be voted upon in any county, to conduct horse races, harness horse races, or dog races at a location within 100 miles of an existing pari-mutuel facility."
[50] Section 550.054(10), F.S.
[51] Sections 550.334(1) and (2), F.S.
[52] Section 550.002(25), F.S.
[53] Section 550.002(11), F.S.

FULL SCHEDULE OF LIVE RACING OR GAMES	
Type of Facility	**Full Schedule Means:**
Greyhound Racing	100 live evening or matinee performances
Jai Alai[54]	100 live evening or matinee performances
Harness Racing	100 live regular wagering performances
Thoroughbred Racing	40 live regular wagering performances
Quarter horse Racing	40 live regular wagering performances

If the pari-mutuel provisions of the act had taken effect, the act would have amended the definition of "full schedule of live racing" for quarter horse races held at the permitholder's facility (as opposed to races held at a leased facility). The bill initially reduces the number of regular wagering performances per year from 40 to 20 but gradually increases that number over time. In the 2010-2011 fiscal year, the conduct of at least 20 regular wagering performances is required; in the 2011-2012 and 2012-2013 fiscal years, the conduct of at least 30 performances is required; and for every fiscal year thereafter, the conduct of at least 40 performances is required.

If the pari-mutuel provisions of the act had taken effect, the act would have also created an exception to the amended standard provided in the bill. The above-stated standard is required unless an alternate 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.

The act also would have provided a different standard for quarter horse races at leased facilities. Under the bill, a quarter horse permitholder that leases another racetrack must conduct 160 events at the leased facility to constitute a full schedule of live racing, which equates to 20 live wagering performances. This schedule is not subject to the staggered increases over several fiscal years.

Intertrack and Simulcast Wagering – Florida law permits wagering on races occurring at other pari-mutuel facilities than the racetrack or fronton where the bettor is located. Wagers on live races conducted at other tracks are divided into two categories called "intertrack" and "simulcast" wagering. Intertrack wagering is defined as ". . . a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, *in-state* track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal re-broadcast from another *in-state* pari-mutuel facility *[emphasis added]*."[55] Simulcast wagering on the other hand, is defined as "broadcasting events occurring live at an *in-state* location to an *out-*

[54] Generally a jai alai fronton must conduct 100 performances to constitute a full schedule of games. However, two exceptions exist: (1) For a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its facility has been less than $4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of at least 40 live evening or matinee performances constitutes a full schedule of live games; and (2) If the fronton operates slot machines in its facility, then the conduct of at least 150 performances constitutes a full schedule.
[55] Section 550.002(17), F.S.

of-state location, or receiving at an *in-state* location event occurring live at an *out-of-state* location, by the transmittal, retransmittal, reception, and re-broadcast of television or radio signals by wire, cable, satellite, microwave, or other electrical or electronic means for receiving or re-broadcasting the events *[emphasis added]*."[56]

Intertrack and simulcast wagering transactions occur between guest and host tracks. The host track is defined as "a track or fronton conducting a live or simulcast race or game that is the subject of an intertrack wager."[57] A host track transmits signals to a guest track.

Simulcasting only may be accepted between facilities with the same class of pari-mutuel permits.[58] For example, thoroughbred permitholders may only receive signals from other thoroughbred permitholders.[59]

Simulcast and intertrack wagering have rules and regulations depending on the market area, which is the area within 25 miles of the track or fronton. For example, guest tracks within the market area of the operating permitholder must receive consent from the host track to receive the same class signal.[60] However, in general, in order for the track or fronton to participate in intertrack or simulcast wagering, the track or fronton must be licensed by the division and must have conducted a full schedule of live racing in the preceding year to receive broadcasts and accept wagers.[61]

In order for a quarter horse permitholder to conduct intertrack wagering at a quarter horse facility, the permitholder is required to obtain the written consent of all other pari-mutuel permitholders within 50 air miles of the quarter horse facility, instead of 25 miles, under s. 550.334, F.S.

If the pari-mutuel provisions of the act had taken effect, the act would have removed the requirement that a quarter horse permitholder receive the written consent of all other pari-mutuel permitholders within 50 miles to conduct intertrack wagering. Instead, to be eligible for intertrack wagering, a quarter horse permitholder must have conducted a full schedule of live racing in the preceding year.

Substitutions - Thoroughbred permitholders may run up to three additional races per day composed exclusively of quarter horses in addition to their regular races of thoroughbred horses.[62]

[56] Section 550.002(32), F.S.
[57] Section 550.002(16), F.S.
[58] Section 550.002(31), F.S., provides that "same class of races, games or permit" means "with respect to a Jai Alai permitholder, jai alai games or other jai alai permitholders; with respect to a greyhound permitholder, greyhound races or other greyhound permitholders; with respect to a thoroughbred permitholder, thoroughbred races or other thoroughbred permitholders; with respect to a harness permitholder, harness races or other harness permitholders; with respect to a quarter horse permit holder, quarter horse races or other quarter horse permitholders.
[59] Section 550.3551(5), F.S.
[60] Section 550.615(4), F.S.
[61] Section 550.615(2), F.S.
[62] Section 550.5251(5)(c), F.S.

In addition, quarter horse racing permitholders operating under a valid permit are authorized to substitute races of other breeds of horses, except for thoroughbreds, for no more than 50 percent of the quarter horse races daily and may substitute races of thoroughbreds for no more than 50 percent of the daily races with daily written consent of pari-mutuel permitholders within 50 miles of the quarter horse facility.[63] A quarter horse permitholder may not substitute thoroughbred racing while a thoroughbred race meet is in progress within 50 miles or within 125 miles of a thoroughbred race meet in progress to a permitholder subject to taxation under s. 550.9515(2)(a), F.S.[64]

If the pari-mutuel provisions of the act had taken effect, the act would have allowed quarter horse permitholders to substitute races of other breeds of horses, including thoroughbred horses, for no more than 50 percent of the quarter horse races during its meet.

Leasing - Jai alai, greyhound, harness, and thoroughbred permitholders may lease any and all of their facilities to any other holder of the same class permit when located within a 35-mile radius of each other. For example, a greyhound permitholder may lease its track to another greyhound permitholder if both are located within a 35-mile radius of each other.[65] However, a greyhound track could not lease to a horse track or vice versa.

Quarter horse permitholders can lease from any licensed racetrack.[66] As a result, a licensed thoroughbred track could lease its facility to a licensed quarter horse track, with no limitations on mileage or same permit type.

If the pari-mutuel provisions of the act taken effect, the act would have amended quarter horse lease requirements and allowed any licensed racetrack to lease its track to any quarter horse racing permitholder located within 35 miles of such track. An exception to the 35 mile lease requirement, however, was created for quarter horse facilities in a county where a referendum to authorize slot machines pursuant to s. 23, Art. X of the State Constitution was conducted. A facility in such a county is not subject to the mileage restriction if they lease from a racetrack located in a county where a slot referendum has occurred (facilities in Miami-Dade and Broward can lease to quarter horse permitholders who are located in Miami-Dade or Broward counties without a mileage restriction).

Florida Thoroughbred Racing Season - The "Florida Thoroughbred Racing Season" is from June 1 to May 31 pursuant to s. 550.5251, F.S. Each permitholder whose thoroughbred permit was conducted in this state between January 1, 1987 and January 1, 1988 is required to annually apply for race meets during the thoroughbred racing season starting the following June 1.[67] The division must issue the license on or before February 15 of each year. Each permitholder can request changes in its racing schedule up to March 31 of each year. Under s. 550.5251(6), F.S., a permitholder who failed to run all of its races during the 2001-2002 season did not lose its right

[63] Section 550.334(7), F.S.
[64] Section 550.334(7)(b), F.S. Section 550.09515(2)(a), F.S., states that the tax on handle for live thoroughbred horserace performances is 0.5 percent.
[65] Section 550.475, F.S.
[66] Section 550.334(3), F.S.
[67] All three licensed thoroughbred permits conducted racing between January 1, 1987 and January 1, 1988 and are required to apply for racing meets under this provision.

to retain its permit or is not subject to disciplinary action. Section 550.5251(7), F.S., required that any thoroughbred permitholder must notify the division by July 1, 2002, if it was unable to operate the performances scheduled for the 2002-2003 license. Section 550.5251(6) and (7), F.S., expired on July 1, 2003.

If the pari-mutuel provisions of the act had taken effect, the act would have amended s. 550.01215(3), F.S., to change the deadline for the issuance of the annual operating date's licenses for the thoroughbred permitholders to the same date as the other permitholders, which is March 15 of each year.

The act would have amended s. 550.5251, F.S., by deleting subsection (1) and the annual thoroughbred race dates for specified permitholders. The act would have changed the start date of the racing season from June 1 to July 1. It would have required the division to issue the license by March 15 instead of February 15. It would have allowed permitholders to request changes in race performances by February 28 instead of March 31 of each year. The act would have deleted subsection (3) of s. 550.5251, F.S., including provisions requiring summer thoroughbred horse racing permits. The act would have deleted subsection (6) of s. 550.5251, F.S., including expired permit provisions for the 2001-2002 thoroughbred licenses. The act would also have deleted subsection (7) of s. 550.5251, F.S., including expired provisions relating to failure to operate all thoroughbred performances.

Harness Track Summer Racing - Any licensed harness track may apply for and obtain a summer quarter horse racing license. The harness track may not operate more than 50 quarter horse racing days during the summer season, which shall extend from June 1 until September 1 of each year.[68]

If the pari-mutuel provisions of the act had taken effect, the act would have amended the summer season for harness track licenses for summer quarter horse racing days. The act would have changed the season from June 1 through September 1 to July 1 through October 1 of each year. This would have shifted the season to the same fiscal year.

Breeders' and Stallion Awards - Breeders' and stallion awards are financial incentives paid to encourage the agricultural industry to breed racehorses in this state. "Purse" means "the cash portion of the prize for which a race or game is contested."[69]

Section 550.26165, F.S., dedicates money for the use of breeders' and stallion awards, which are to be used for registered Florida-bred horses winning races and for other awards to the owners of stallions who sired Florida-bred horses winning stakes races. Awards must be given at a uniform rate and be between 15 and 20 percent of the announced gross purses. As determined by the Florida Thoroughbred Breeders' Association, not less than 17 percent or more than 40 percent of the moneys dedicated for the breeders' and stallion awards for thoroughbreds shall be returned pro rata to the permitholders that generated the moneys to be used for special racing awards.

Awards are paid on thoroughbred horse races taking place only in the State of Florida.

[68] Section 550.3355, F.S.
[69] Section 550.002(27), F.S.

Each breeders' association is required to develop a plan each year that provides a uniform rate payment and procedures for breeders' and stallion awards, and imposing restrictions not allowing the rate to be less than 15 percent of the total purse payment.

If the pari-mutuel provisions of the act had taken effect, the act would have permitted greater flexibility authorizing breeders' awards to be greater than 20 percent or less than 15 percent of the announced gross purse and authorizes the rates to vary for breeders' awards to be based upon the place of finish, class of race, state or county in which the race took place, and the state in which the stallion siring the horse was standing when conceived.

The act would have authorized stallion awards to be greater than 20 percent and not less than 15 percent of the announced gross purses and authorizes the rates to vary for stallion awards to be based upon the place of finish, class of race, state or county in which the race took place, and the state in which the stallion siring the horse was standing when conceived. Also stallion awards might have been eliminated to enhance breeders' or other awards.

The act would have authorized payment of awards from funds dedicated for payment of breeders' and stallion awards for Florida bred horses without regard to any awards paid pursuant to s. 550.2625(6), F.S.

Converting Permits - In general, pari-mutuel permitholders cannot convert their type of permit to another type of pari-mutuel permit. There is, however, one exception to this standard. Any greyhound permit that used to be a jai alai permit may be returned to a jai alai permit if the permitholder never conducted greyhound racing or has not conducted greyhound racing for a period of 12 consecutive months.[70]

Following the general rule that permits cannot be converted, the quarter horse provisions provide that quarter horse permits are not eligible for transfer or conversion to another type of pari-mutuel operation.[71]

If the pari-mutuel provisions of the act had taken effect, the act would have created s. 550.3345, F.S., to allow the conversion of a quarter horse permit to a limited thoroughbred permit. Under the process, the holder of a quarter horse racing permit may, within 1 year after the effective date of the section, apply to the division for a transfer of the quarter horse racing permit to a not-for-profit corporation with a board that must meet statutory appointment requirements. Upon approval of the transfer, the corporation would have been able to request the division to convert the quarter horse racing permit to a thoroughbred permit. Neither the transfer of the quarter horse racing permit nor its conversion to a limited thoroughbred permit is subject to the mileage limitation or the ratification election. From December 1 through April 30, no live thoroughbred racing would have been conducted under the transferred and converted permit on any day during which another thoroughbred permitholder is racing within 125 air miles of the not-for-profit facility. Further, under the limited thoroughbred permit, net revenues from thoroughbred racing would have been required to be dedicated to the enhancement of thoroughbred purses and awards and to the general promotion of the thoroughbred breeding industry.

[70] Section 550.01215(6), F.S.
[71] Section 550.334(8), F.S.

In addition to allowing the limited conversion of a quarter horse permit to a thoroughbred permit, the act would have created subsection (14) of s. 550.054, F.S., to allow for the conversion of a jai alai permit. This subsection allows a jai alai permitholder to apply to the division to convert the permit to one for greyhound racing if the facility is located in a county in which the division has issued only two pari-mutuel permits, if such permit was not previously converted from any other class, and the holder of the permit has not conducted jai alai games during a period of 10 years immediately preceding his or her application for conversion.

According to the division, only two permits should be allowed to convert under this provision: one is a jai alai permit in Volusia County and another is in Palm Beach County.

Definition of "Year" - Under ch. 550, F.S., the term "year" means calendar year. In various places throughout the chapter, but not all, the term "year" was modified to mean "fiscal year." Therefore, the meaning of "year" is inconsistent throughout the chapter.

If the pari-mutuel provisions of the act had taken effect, the act would have changed the definition of year from "calendar" year to "fiscal" year. Changing the definition provides for clarity for the division and licensed pari-mutuels, as well as provides for consistent terminology.

Payment of Taxes - Pari-mutuel permitholders are subject to multiple taxes, including an admission tax, a tax on handle,[72] and a breaks[73] tax. Taxes are paid to the division and deposited with the Chief Financial Officer, to the credit of the Pari-Mutuel Wagering Trust Fund. Such payments are due by 3 p.m. Wednesday of each week for the taxes imposed and collected for the preceding week. In addition to paying the taxes, the permitholder must file a report by the 5th day of each calendar month for all taxes paid during the preceding month.

If the permitholder operates slot machines, then s. 551.106(3), F.S., requires the payment of taxes for slot machine revenues to be paid by 3 p.m. Wednesday of each week for taxes imposed and collected for the preceding week ending on Sunday. The slot machine licensee must file a report under oath by the 5th day of each calendar month for all taxes remitted during the preceding calendar month.

If the permitholder operates a cardroom, then s. 849.086(13)(c), F.S., requires the payment of the cardroom admission tax and gross receipts tax to be paid by the 5th day of each calendar month for taxes imposed for the preceding month's cardroom activities. In addition, the licensee shall file a report by the 5th day of each calendar month for the cardroom activities for the preceding calendar month.

If the pari-mutuel provisions of the act had taken effect, the payments of pari-mutuel and slot revenue taxes must be paid monthly beginning on July 1, 2012. Under current law, permitholders must file a monthly tax report. This change in tax payments would provide a uniform tax payment and tax reporting requirement for the industry.

[72] Section 550.002(13), F.S., defines "Handle" to mean "the aggregate contributions to pari-mutuel pools."
[73] 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."

Occupational Licenses - Section 550.105(1), F.S., provides that an annual occupational license which is valid from May 1 to June 30 is required for all persons specified in s. 550.105(2)(a), F.S. The permitholder can choose the option of purchasing a three year license if the fees are paid for all three years. According to the department, it would be beneficial if they could charge a reduced rate for a three year license as an incentive for people to get a three year license instead of just the one year license.

Temporary occupational licenses may be granted under s. 550.105(6), F.S. However, no temporary occupational license is valid for more than 30 days, and no more than one temporary license may be issued for any person in any year. According to the department, it would be beneficial to lengthen this amount of time to allow more thorough application processing. The required information for the occupational license application including a requirement that each applicant have their signature witnessed and notarized or signed in the presence of a division official is provided in s. 550.105(10), F.S. The department recommended that this requirement be eliminated to allow for electronic application processing.

If the pari-mutuel provisions of the act had taken effect, the act would have provided flexibility in the occupational license fee. The act lengthened the validity of a temporary occupational license from 30 days to 90 days. The act removed the requirement for an applicant to notarize the occupational license application. In addition, the act provided a definition for the term "convicted" for the occupational license section. The act also created subparts (b), (c), and (d) of s. 550.105(10), F.S., to require that fingerprints be submitted to the Department of Law Enforcement and entered into the statewide automated fingerprint identification system for all purposes and uses authorized for arrest fingerprint cards. It also required that the prints be retained and if an arrest record is identified with the retained fingerprints, that the division shall be notified. In addition, the act provided that the division shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for a national criminal history records check at least once every 5 years.

Animal Cruelty - Section 550.2415(6)(a), F.S**.,** states the intent of the legislature that all racing animals be treated humanely both on and off the tracks for the lives of the animals. It also states that any conviction of cruelty to animals pursuant to s. 828.12, F.S., involving a racing animal constitutes a violation of this chapter.

If the pari-mutuel provisions of the act had taken effect, the act would have amended s. 550.2415(6)(d) and created s. 550.2415(6)(e), F.S., granting the division rule authority for the supervision and regulation of the welfare of racing animals at pari-mutuel facilities. It deleted the reference to conviction and changes it to any act committed by a licensee which would constitute cruelty to animals as defined by s. 828.02, F.S., involving any animal, not just a racing animal, constitutes a violation of this chapter. Imposing a penalty for violation of this chapter or any rule would not prohibit prosecution for cruelty to animals.

Use of Electronic Transmitting Equipment - Section 550.3605, F.S., makes it a misdemeanor of the second degree to possess or control on the premises of a licensed facility any electronic transmitting equipment or device that is capable of transmitting or communicating any information whatsoever to another person, without the written permission of the division.

According to the division, this would allow the individual pari-mutuel permitholder the discretion to ban cell phones, iPods, PDAs, or other such electronic devices from their facilities.

If the pari-mutuel provisions of the act taken had effect, the act would have repealed s. 550.3605, F.S. Removing this prohibition protects patrons from a potential criminal violation for carrying and using such devices.

Slot Machines - Chapter 849, F.S., governs the conduct of gambling in Florida. Section 849.15, F.S., prohibits the manufacture, sale, lease, play, or possession of slot machines in Florida. Subsection (2), provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S.

Section 849.16, F.S., defines slot machines for purposes of chapter 849, F.S. as:

> (1) Any machine or device is a slot machine or device within the provisions of this chapter if it is one that is adapted for use in such a way that, as a result of the insertion of any piece of money, coin, or other object, such machine or device is caused to operate or may be operated and if the user, by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, may:
> (a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or
> (b) Secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

During the 2004 General Election, the electors approved Amendment 4 to the State Constitution, codified as s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005. The electors approved slot machines at the pari-mutuel facilities in Broward County, but the measure was defeated in Miami-Dade County. Under the provisions of the amendment, four pari-mutuel facilities are eligible to conduct slot machine gaming in Broward County:

- Gulfstream Park Racing Association, a thoroughbred permitholder;
- The Isle Casino and Racing at Pompano Park, a harness racing permitholder;
- Dania Jai Alai, a jai alai permitholder; and,
- Mardi Gras Race Track and Gaming Center, a greyhound permitholder.

Legislation was passed during the 2005 Special Session B, HB 1B, ch. 2005-362, L.O.F., that implemented Amendment 4. The division is charged with regulating the operation of slot machines in the affected counties. Of the four eligible in Broward County, all are operating except Dania Jai Alai.

On January 29, 2008, another referendum was held in which slot machines in Miami-Dade County were approved. Under the provisions of Amendment 4, three pari-mutuel facilities are now eligible to conduct slot machine gaming in Miami-Dade County:

- Miami Jai-Alai, a jai-alai permitholder;
- Flagler Greyhound Track, a greyhound permitholder; and,
- Calder Race Course, a thoroughbred permitholder.

Of the three eligible in Miami-Dade County, Calder and Flagler are operating slot machines.

Section 551.102(8), F.S., defines "slot machine" to mean:

> any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. Slot machines may use spinning reels, video displays, or both. A slot machine is not a "coin-operated amusement machine" as defined in s. 212.02(24) or an amusement game or machine as described in s. 849.161, and slot machines are not subject to the tax imposed by s. 212.05(1)(h).

Section 551.116, F.S., provides that the slot machine gaming areas may be open 365 days a year and open for a maximum of 18 hours per day Monday through Friday and 24 hours per day on Saturday and Sunday and on those holidays specified in s. 110.117(1), F.S.

Section 551.106(2), F.S., provides that the tax rate on slot machine revenues at each facility is 50 percent. The slot machine revenue tax is paid to the division for deposit into the Pari-mutuel Wagering Trust Fund for immediate transfer by the Chief Financial Officer for deposit into the Educational Enhancement Trust Fund of the Department of Education. Any interest earnings on the tax revenues are to be transferred to the Educational Enhancement Trust Fund. Funds transferred to the Educational Enhancement Trust Fund are used to supplement public education funding statewide and shall not be used for recurring appropriations.

If the pari-mutuel provisions of the act had taken effect, the act would have amended the definition of "eligible facility" in s. 551.102(4), F.S., to include not only those pari-mutuel facilities that were in existence at the time of the adoption of the constitution amendment and that had conducted live racing or games during the calendar years 2002 and 2003 and which were approved in a referendum, but also includes:

- Any licensed pari-mutuel facility located within a county as defined in s. 125.011, F.S.,[74] provided such facility:
  - has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license;
  - pays the required license fee; and,
  - meets the other requirements of this chapter; or
- Any licensed pari-mutuel facility in any other county in which a majority of the voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section provided the facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required licensed fee, and complies with the other specified statutory requirements.

The effect of this section would be to allow other facilities located in Dade County to operate slot machines provided the facility has conducted live racing for 2 calendar years prior to application for the slot license, pays the required license fee, and meets other statutory requirements of this chapter. It would also open-up the possibility for other facilities in other counties to operate slot machines provided a statutory or constitutionally approved referendum approves the slot machine activity.

If the pari-mutuel provisions of the act had taken effect, the act would have also amended s. 551.104(10), F.S., to add a new paragraph 2., to provide that no slot machine license or renewal shall be issued to an applicant to conduct pari-mutuel wagering meets of quarter horse racing unless the applicant has on file a binding written agreement between the applicant and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the applicant's facility governing the payment of purses.

The act would have amended the annual fee and tax structure for slot machine licensees in s. 551.106, F.S. Under the act, in 2010-2011, the licensee would have been required to pay the division a nonrefundable license fee of $2.5 million dollars per year. In 2011-2012 and every year thereafter, the licensee would pay the division a nonrefundable license fee of $2 million per year. This provides was gradual reduction in the annual license fee currently paid by slot machine licensees. In addition, the act would have reduced the tax rate on slot machine revenue from 50 percent to 35 percent. However, if during any state fiscal year the amount of tax paid to the state by all slot machine licensee were less than the amount paid to the state in 2008-2009, each slot machine licensee would pay to the state within 45 days after the end of the fiscal year a surcharge equal to its pro rate share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the current fiscal year.

The act would have amended the tax payment schedule. Instead of paying taxes weekly, beginning on July 1, 2012, the slot machine licensee would be required to remit to the division

[74] As defined in s. 125.011(1), F.S., "county" means any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, Dade County. Hillsborough and Monroe could also potentially meet this statutory definition but only Dade has adopted a home-rule charter.

payment for the slot machine taxes monthly. This would provide a uniform tax reporting and tax payment schedule for the licensee.

The act would have changed current law to allow for a progressive slot machine system in Florida or in other jurisdictions.

Cardrooms - Pari-mutuel facilities within the state are allowed to operate poker cardrooms under s. 849.086, F.S. A cardroom may be operated only at the location specified on the cardroom license issued by the division and such location only may be where the permitholder is authorized to conduct pari-mutuel wagering activities subject to its pari-mutuel permit. 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. Authorized games and cardrooms do not constitute casino gaming operations.

Instead, such games are played in a non-banking matter, i.e. where the facility has no stake in the outcome. Such activity is regulated by the department and must be approved by ordinance of the county commission where the pari-mutuel facility is located.

Section 849.086(2)(a), F.S., defines an "authorized game" at a cardroom as "a game or series of games of poker which are played in a non-banking manner."[75] Authorized cardroom games or series of games of poker may not exceed a $5 bet with a maximum of three raises in any round of betting.[76]

A cardroom may be operated by a pari-mutuel permitholder on any day for a cumulative amount of 12 hours.[77]

In order to renew a cardroom operator license, the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior to the application. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior to the application. 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.[78]

If the pari-mutuel provisions of the act had taken effect, the act would have amended s. 849.086(5), F.S., to clarify that an initial cardroom license can be issued to a pari-mutuel

[75] A "banking game" is defined in s. 849.086(2)(b), F.S., as ". . . a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers or in which the cardroom establishes a bank against which participants play."
[76] Section 849.086(8), F.S.
[77] Section 849.086(7)(b), F.S.
[78] Section 849.086(5)(b), F.S.

permitholder only after its facilities are in place and after it conducts its first day of live racing or games.

The act would have amended s. 849.086(7), F.S., to extend cardroom operating hours from 12 hours per day to 18 hours per day Monday through Friday and 24 hours per day on Saturday and Sunday. The act would have specified that cardroom operations may not extend past the hours provided regardless of the number of cardroom licenses issued for permitholders operating at the facility.

The act would have amended s. 849.086(8), F.S., to eliminate the $5 limit on poker bets. As a result, no-limit poker could be played in licensed cardrooms. In addition, the subsection was amended to remove the cap on tournament play and allows the entry fees to be set by the cardroom operator.

The act would have amended s. 849.086(13), F.S., to require quarter horse permit holders to have a written agreement governing the payment of purses prior to obtaining or renewing a cardroom license.

Banked cards games, roulette, and craps

Currently, banked card games, roulette, roulette-styled games, craps, and craps-styled games are illegal in Florida. Section 849.08, F.S., provides:

> Whoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 849.085, F.S., authorizes penny-ante games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg as long as the winnings in a single round, hand, or game do not exceed $10 in value. Section 849.086, F.S., provides for games of poker and dominoes which are played in a non-banking manner at cardrooms located at licensed pari-mutuel permitholder facilities.

Section 849.231, F.S., makes it unlawful for any person to:

> manufacture, sell, transport, offer for sale, purchase, own, or have in his or her possession any roulette wheel or table, faro layout, crap table or layout, chemin de fer table or layout, chuck-a-luck wheel, bird cage such as used for gambling, bolita balls, chips with house markings, or any other device, implement, apparatus, or paraphernalia ordinarily or commonly used or designed to be used in the operation of gambling houses or establishments, excepting ordinary dice and playing cards.

The penalty for violation of the section is a misdemeanor of the first degree.[79] Any occupational license held by a person found guilty of violating s. 849.231, F.S., shall be suspended for a period of 5 years. Section 849.232, F.S., provides for seizure and destruction of the items listed in s. 849.231, F.S.

III. Effect of Proposed Changes:

Indian Gaming

The PCS provides that it is the intent of the Legislature to review any tribal-state gaming compact executed between the Governor and the Tribe, and to ratify the compact if it is in the best interests of the people of the State of Florida.

Compact of August 2009

The PCS amends s. 285.710, F.S., to provide that the compact executed by the Governor and the Seminole Tribe of Florida on August 28, 2009 and August 31, 2009, respectively is not approved or ratified and void and not in effect.

Governor's Authority to Execute a Compact

The PCS creates s. 285.712, F.S., to designate the Governor as the state officer responsible for negotiating and executing, on behalf of the state, tribal-state gaming compacts with federally recognized Indian tribes located within the state for the purpose of authorizing Class III games in this state. The authority granted to the Governor under ss. 285.710 and 285.711, F.S, is limited to a gaming compact with the Seminole Tribe of Florida. Section 285.712, F.S., would authorize the Governor to negotiate and execute a tribal-state gaming compact with other federally recognized Indian Tribes in Florida, i.e., the Miccosukee Tribe of Indians of Florida. The compact must be conditioned upon ratification by the Legislature.

The PCS does not specify the terms or provisions that must be included, or may not be included, in a valid tribal-state compact.

Upon ratification of a tribal-state compact, the Secretary of State must forward a copy of the executed compact and the ratifying act to the United States Secretary of the Interior for his or her review and approval, in accordance with 25 U.S.C. s. 2710(8)(d).

Pari-mutuel Wagering

The PCS amends s. 26 of ch. 2009-170, L.O.F., to make all of the pari-mutuel provisions in ch. 2009-170, L.O.F., effective on the date that this bill becomes a law.[80]

[79] *See* s. 849.233, F.S.

[80] *See* "Present Situation" section for a summary of the Pari-mutuel wagering provisions in s. 26, ch. 2009-170, L.O.F., that would become effective if this bill becomes a law.

Effective Date

The PCS amends the effective date ch. 2009-170, L.O.F., to make all of the pari-mutuel provisions in the act effective on the date this bill becomes a law.

The PCS is effective upon becoming law.

IV. Constitutional Issues:

Municipality/County Mandates Restrictions:

None.

Public Records/Open Meetings Issues:

None.

Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

Tax/Fee Issues:

The data contained in the following table is the result of an impact conference conducted by the Revenue Estimating Conference (REC) on the pari-mutuel provisions contained in ch. 2009-170, L.O.F., following its enactment during the 2009 Extended Regular Session. The REC updated part of the data in February, 2010.

	FY 2010-2011		FY 2011-2012	FY 2012-2013	FY 2013-2014
	Cash	Recurring			
Increased Cardroom Hours	1.5	1.5	1.5	1.5	1.5
Increased Cardroom Betting Limits	1.3	1.3	1.3	1.3	1.3
Converting Jai Alai To Greyhound	0	.6	Insignificant	.6	.6
Monthly Payment Of Taxes Beginning July 1, 2012	0	0	0	(2.3)	0

	FY 2010- 2011		FY 2011-2012	FY 2012-2013	FY 2013-2014
	Cash	Recurring			
Quarter Horse Convert To Not-For-Profit Thoroughbred	0	0	.1	.3	.3
Quarter Horse Substitute 50% Thoroughbred	.3	.3	.3	.3	.3
Slot Machine License Fee Reduced from $3 million To $2.5 million And Then $2 million*	(3)	(6)	(6)		
Slots Operating At Hialeah Park*	0	2.3	2.3		
Slot Machine Tax Paid Monthly Beginning July 1,2 012*	0	0	0	0	0
Progressive Slot Machine Gaming; Prize Payout Percentage*	0	0	0	0	0
Slot Machine Tax Reduction To 35% With Floor Equal to 2008-2009 Collections*	0	0	0	0	0
Slot machine Taxes at Hialeah Park*	0	0	0	0	0

* Indicates that the data was not updated at the REC conducted in 2010.

Private Sector Impact:

The PCS provides that the provisions in ch. 2009-170, L.O.F., are effective upon this bill becoming law. In ch. 2009-170, L.O.F., cardrooms could operate for longer hours and pari-mutuel licensees would pay a monthly tax instead of weekly. The longer hours and the additional games should result in additional revenue to the facilities. In addition, the PCS should reduce costs to the facilities with monthly tax payments instead of weekly or biweekly payments.

Government Sector Impact:

Chapter 2009-170, L.O.F., should reduce regulatory costs by conforming the tax payments and monthly report into one monthly process for the division. The PCS should also reduce regulatory costs by providing uniform dates for licensure. Chapter 2009-170, L.O.F., also allows the division greater flexibility to offer occupational licenses that are valid for more than one year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

Amendments:

None.