

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 Commerce and Tourism Committee

BILL: SB 2050

INTRODUCER: Senator Braynon

SUBJECT: Destination Resorts

DATE: April 4, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Pre-meeting
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

SB 2050 creates the seven-member Destination Resort Commission (commission), with the principal responsibility to license and regulate no more than five destination resorts that would offer limited gaming, such as baccarat, twenty-one, poker, craps, slot machines, video gaming of chance, and roulette wheels.

Licenses would be awarded through an invitation-to-negotiate process. The commission is not required to award five licenses. The bill establishes a \$1 million application fee, a \$50 million initial license fee, and a \$2 million annual license fee.

The bill also provides a graduated gross receipts tax rate that would be based upon the infrastructure investment in each resort. The tax rate ranges from 10 percent for investments of \$2.5 billion or more, 15 percent for investments of between \$1 billion to \$2.5 billion, and 20 percent for investments under \$1 billion. The commission would receive \$5 million of these revenues to pay its operations; the rest would be allocated among the General Revenue Fund, Visit Florida’s tourism marketing campaign, school readiness programs, and transportation for the disadvantaged.

The bill specifies a number of requirements for applicants, including that they plan to train and hire Florida residents.

SB 2050 amends ss. 20.21, 120.80, 849.231, and 849.25, F.S.; and creates several unnumbered sections of law.

II. Present Situation:

Overview of Florida Gaming Laws and Regulations

In general, gambling is illegal in Florida.¹ 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 machines² in Florida. Section 849.15(2), F.S., 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. Florida's gambling prohibition includes prohibitions against keeping a gambling house,³ and running a lottery.⁴ Section 7, Art. X, of the Florida Constitution, prohibits lotteries, other than pari-mutuel pools authorized by law on the effective date of the Florida Constitution, from being conducted in Florida by private citizens.⁵

Gaming is permitted at licensed pari-mutuel wagering tracks and frontons,⁶ by the state operated lottery,⁷ which must operate "so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens,"⁸ and by the Seminole Indian tribe.

Pari-mutuel wagering and Cardrooms

The pari-mutuel industry in Florida is made up of greyhound racing, different types of horseracing, and jai alai.⁹ 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). Chapter 550, F.S., provides specific licensing requirements, taxation provisions, and regulations for the conduct of the industry.

Pari-mutuel facilities within the state are allowed to operate poker card rooms under s. 849.086, F.S. No-limit poker games are permitted.¹⁰ The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. The games are played in a non-banking matter, i.e., the house¹¹ has no stake in the outcome of the game. Such activity is regulated by the department and must be approved by an ordinance of the county commission where the pari-mutuel facility is located. Each cardroom operator must pay a tax of 10 percent of the cardroom operation's monthly gross receipts.¹²

¹ Section 849.08, F.S.

² Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S.

³ Section 849.01, F.S.

⁴ Section 849.09, F.S.

⁵ The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

⁶ See ch. 550, F.S., for the regulation of pari-mutuel activities.

⁷ The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., provides the legislative purpose and intent in regard to the lottery.

⁸ See s. 24.104, F.S.

⁹ "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.

¹⁰ Section 849.086(8)(b), F.S. Prior to the effective date of ch. 2010-29, L.O.F., the maximum bet was \$5.

¹¹ Section 849.086(2)(j), F.S., defines "house" as "the cardroom operator and all employees of the cardroom operator."

¹² Section 849.086(13)(a), F.S.

Slot Machine Gaming

Slot machine¹³ gaming at licensed pari-mutuels is governed by ch. 551, F.S. Pari-mutuel facilities that operate slot machine gaming or engage in other casino-style gaming are generally known as “racinos.” 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. Currently, there are five pari-mutuels in those counties conducting slot machine gaming.

Slot machine licensees are required to pay a license fee of \$2.5 million for fiscal year 2010-2011. The annual slot machine license fee is reduced in fiscal year 2011-2012 to \$2 million.¹⁴ In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.¹⁵

Seminole Indian Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a tribal-state compact under the Indian Gaming Regulatory Act of 1988¹⁶ that authorizes the Tribe to conduct Class III gaming¹⁷ at seven tribal facilities throughout the state. The compact was subsequently ratified by the Legislature.¹⁸

The compact has a 20-year term. It permits the Tribe to offer slot machines, raffles and drawings, and any other new game authorized for any person for any purpose, at all seven of its tribal casinos.¹⁹

¹³ Section 551.102(8), F.S., defines “slot machine” as the term is used in ch. 551, F.S., for the regulation of slot machine gaming at the qualifying Miami-Dade and Broward county pari-mutuels.

¹⁴ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was \$3 million.

¹⁵ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.

¹⁶ The Indian Gaming Regulatory Act of 1988 or “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.

¹⁷ The Indian Gaming Regulatory Act of 1988 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.
- “Class II gaming” includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo. 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. 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.
- “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, slot machines, and pari-mutuel wagering.

¹⁸ Chapter 2010-29, L.O.F.

¹⁹ *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. (hereinafter *Gaming Compact*) The Tribe has three gaming facilities located 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 compact permits the Tribe to conduct banked card games, including blackjack, chemin de fer, and baccarat, but the play of the banked card games is not allowed at the casinos at the Brighton or Big Cypress facilities. If these banked games are authorized for any other person for any other purpose, except if banked card games are authorized by a compact with the Miccosukee Indians, the Tribe would be authorized to offer banked cards at all seven of its facilities. The authority for banked card games terminates at the end of 5 years unless affirmatively extended by the Legislature or the Legislature authorizes any other person to offer banked card games.

In exchange for the Tribe's exclusive right to conduct slot machine gaming outside of Miami-Dade and Broward counties and the exclusive right to offer banked card games at the specified facilities (these grants of authority are known as the "exclusivity provision"), the compact provides for revenue sharing payments by the Tribe to the state as follows:

- During the initial period (first 24 months), the Tribe is required to pay \$12.5 million per month (\$150 million per year);
- After the initial period, the Tribe's guaranteed minimum revenue sharing payment is \$233 million for year 3, \$233 million for year 4, and \$234 million for year 5;
- After the initial period, the Tribe pays the greater of the guaranteed minimum or payments based on a variable percentage of annual net win²⁰ that range from 12 percent of net win up to \$2 billion, to 25 percent of the amount of any net win greater than \$4.5 billion;
- After the first 5 years, the Tribe will continue to make payments to the state based on the percentage of net win without a guaranteed minimum payment; and
- If the Legislature does not extend the authorization for banked card games after the first 5 years, the net win calculations would exclude the net win from the Tribe's facilities in Broward County.

The compact provides for the expansion of gaming in Miami-Dade and Broward counties under the following limited circumstances:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuels located in Miami-Dade and Broward counties and if the net win from the Tribe's Broward facilities drops for the year after the new gaming begins, then the Tribe may reduce the payments from its Broward facilities by 50 percent of the amount of the reduction in net win.
- If new forms of Class III gaming and other casino-style gaming are authorized for other locations in Miami-Dade and Broward counties, then the Tribe may exclude the net win from their Broward facilities from their net win calculations when the new games begin to be played.
- If new games are authorized to any location in Miami-Dade and Broward counties within the first 5 years of the Compact, the guaranteed minimum payment would no longer apply to the Tribe's revenue sharing payments and the \$1 billion guarantee would not be in effect. The Tribes payments would be based on the applicable percentage of net win.

²⁰ The compact defines "net win" as "the total receipts from the play of all Covered Games less all prize payouts and free play or promotional credits issued by the Tribe."

Revenue sharing payments cease if:

- The state authorizes new forms of Class III gaming or other casino-style gaming after February 1, 2010, or authorizes Class III gaming or other casino-style gaming at any location that was not authorized for such games before February 1, 2010; and
- The new gaming begins to be offered for private or public use.

Economic Impact of Casino-Oriented Destination Resorts

Thirteen states now have commercial casino operations, excluding those managed by Indian Tribes or at racetracks, and Massachusetts, Texas, New York, and Rhode Island are considering legislation this year to legalize casino gambling.²¹ Data on how many casinos are stand-alone operations and how many are “destination resorts”²² is not readily available.

In the most recent numbers available, the American Gaming Association reported in 2008²³ that the commercial casino industry employed more than 375,000 people earning more than \$13 billion in total wages. The report also described casinos as significant contributors to the nation’s economy, with gross gaming revenues totaling more than \$32.5 billion in 2008.

Casinos have direct economic impacts on the local and state level. For example, a 2008 economic development impact study on the Chumash Casino Resort in Santa Barbara, Calif.,²⁴ indicated that the casino:

- Created 1,587 direct jobs and an additional 703 indirect jobs in the county;
- Generated more than \$350 million in sales in the county, and specifically that every \$10 in sales at the casino generated \$4 in additional sales in the community; and
- Tourism received a major boost when the casino opened in 2004.

The American Gaming Association maintains a database of pertinent economic data²⁵ on the 13 states that have commercial casinos and the 12 states, including Florida, with racetrack casinos (nicknamed “racinos”). The two states with commercial casinos closest to Florida – Mississippi and Louisiana – in 2009 reported significant revenues from gaming operations:

- Mississippi reported at its 30 commercial casinos:
 - Number of casino employees totaled 25,739;
 - Casino employee wages were \$855.25 million (including tips and benefits);
 - Gross casino gaming revenue was \$2.465 billion; and
 - The state’s gaming tax revenue was \$296.34 million.
- Louisiana reported at its 14 commercial casinos:

²¹ Interim Report 2011-133: Review of Expansion of Casino Gaming in Other States. Prepared by Senate Committee on Regulated Industries. Published in October 2010. Available at http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-133ri.pdf.

²² “Destination resorts” or “destination resort casinos” are generally defined as mega-centers that feature shopping, conference facilities, restaurants, and live entertainment in addition to casino gaming. Most new casinos are being built in this format.

²³ http://www.americangaming.org/Industry/factsheets/general_info_detail.cfv?id=39.

²⁴ Economic Impact of the Chumash Casino Resort on the County of Santa Barbara, prepared by The California Economic Forecast for the Santa Barbara County taxpayers Association. Published February 2008. Available at: http://www.sbcta.org/Final_Report_Chumash.pdf. Last visited March 19, 2011.

²⁵ The American Gaming Association has a complete list of what types of gaming operations are in each state, economic development data, and how each state uses its share of the revenues generated. The latest data is from 2009. See: <http://www.americangaming.org/Industry/state/statistics.cfm>.

- Number of casino employees totaled 17,610;
- Casino employee wages were \$602.51 million;
- Gross casino gaming revenue was \$2.456 billion; and
- The state's gaming tax revenue was \$598.14 million.

The database does not calculate indirect and induced economic benefits from casino operations. Destination resorts are also popular internationally among tourists.²⁶ What is purported to be the largest destination resort east of Las Vegas is under construction in the Bahamas.²⁷ The new Baha Mar resort is expected to contribute an additional 10 percent growth in the Bahamian GDP by creating 12,000 jobs paying in the aggregate more than \$305 million in annual wages. According to projections, Baha Mar will help raise the average annual income for a Bahamian family from \$29,000 to \$33,500, and in its first year of operations will contribute almost \$1 billion to the local economy.

Tourism and Convention Space

According to preliminary estimates²⁸ by Visit Florida, an estimated 82.6 million visitors came to Florida in 2010, an increase of 2.1 percent over 2009 figures.²⁹ For the second half of 2010, direct travel-related employment in Florida increased by 1.8 percent, with more than 15,000 additional jobs in the fourth quarter alone. Domestic visitation to Florida increased by 0.5 percent in 2010, when compared to 2009. During the same period, Canadian travel to Florida increased by 16.2 percent and the overseas market to Florida increased by 13.6 percent. Primary data collected at Florida's 14 major airports in 2010 reflects a 3.5-percent increase in total enplanements from 2009.³⁰

Preliminary estimates of visitors to Florida for the fourth quarter of 2010 show an estimated 20.8 million people visited the Sunshine State. This reflects an increase of 5.1 percent from the same period in 2009. Visit Florida also reported that an estimated 18.0 million domestic visitors came to Florida during the fourth quarter of 2010, a 4.1 percent increase over 2009. During the same period, Canadian travel to Florida increased by 5.7 percent and the overseas market to Florida increased by 13.5 percent. Primary data collected at Florida's 14 major airports shows a 7.8 percent increase in total enplanements to Florida for the fourth quarter of 2010 over the same period in 2009.³¹

The following information regarding convention space was obtained from select areas around the state:

- In Orlando, the Gaylord Orlando Hotel has 400,000 square feet of meeting and convention space and 1,406 hotel rooms and suites;³² the Peabody Orlando has 300,000

²⁶ An example of websites advertising international casinos and destination resorts is <http://www.worldcasinodirectory.com>. Last visited March 19, 2011.

²⁷ Information posted at <http://starglobaltribune.com/2011/destination-resorts-a-new-generation-of-tourists-destinations-opened-5954>. Last visited March 8, 2011.

²⁸ Preliminary estimates are issued 45 days after the end of each calendar quarter. Final estimates are released when final data are received for all estimates in the report.

²⁹ See <http://media.visitflorida.org/news/news.php?id=169>, (last visited March 19, 2011).

³⁰ *Id.*

³¹ *Id.*

³² See <http://www.gaylordhotels.com/palms-home.html?intcmp=gp-pl=topnav-ref=home>.

square feet of meeting and convention space; the Orlando World Marriott has 450,000 square feet of meeting and convention space and 2,000 hotel rooms and suites;³³ and the Walt Disney World Resort has more than 600,000 square feet of space.

- The Orange County Convention Center in Orlando has 2.1 million square feet of exhibit space.
- The Tampa Convention Center has 200,000 square feet of exhibit space and 42,000 square feet of meeting space.
- Jacksonville Convention Center has 78,500 square feet of exhibit space and 48,750 square feet of meeting space.
- The Miami Convention Center has 28,000 square feet of exhibit space, an additional 34 meeting rooms, a 444-seat and a 5,000-seat auditorium, and a 117-seat lecture hall.

Executive Branch Structure

Article IV of the Florida Constitution, limits executive departments to 25 in number, excluding those authorized or created in that document. There are five constitutionally created or authorized departmental entities: State Board of Administration; Department of Veterans' Affairs; Florida Fish & Wildlife Conservation Commission; Department of Elderly Affairs; Board of Governors; and the Parole Commission.

There are 21 departments authorized by statute: Department of State; Department of Legal Affairs; Department of Financial Services; Department of Agriculture and Consumer Services; Department of Education; Department of Business and Professional Regulation, Department of Community Affairs; Department of Children & Family Services; Florida Department of Law Enforcement; Department of Revenue; Department of Management Services; Department of Transportation; Department of Highway Safety and Motor Vehicles; Department of Environmental Protection; Department of Military Affairs; Department of Citrus; Department of Corrections; Department of Juvenile Justice; Department of the Lottery; Agency for Health Care Administration; and the Department of Health.

The Executive Office of the Governor may be considered the functional equivalent of a department.

In summary, there appears to be 22 state entities that are executive departments, so Florida has three available slots for any new agencies the Legislature may in the future consider creating.

III. Effect of Proposed Changes:

SB 2050 creates several undesignated sections of law and amends four sections of existing law to establish the Destination Resort Commission (commission), which will select and regulate any destination resort operations that open in Florida.

Section 1: Amends s. 20.21, F.S., to create the commission within the Department of Revenue (DOR).

³³ See <http://www.marriottworldcenter.com/>.

Section 2: Amends s. 120.80, F.S., to exempt the commission from certain provisions of the Florida Administrative Procedures Act, in ch. 120, F.S., specifically:

- The notice and hearing requirements of ss. 120.569 and 120.57(1)9a), F.S., for proceedings related to the issuance, denial, renewal, or amendment of a destination resort license;
- The process and deadlines in s. 120.60, F.S., for granting licenses does not apply to applications for a destination resort license; and
- The process for petitioning for, or granting, a waiver or variance, or granting a waiver or variance, pursuant to s. 120.542, F.S.

Section 3: Specifies that sections 4-35 of SB 2050 may be cited as the “Destination Resort Act” or “Resort Act.”

Section 4: Creates definitions for 27 terms used in this act. Key definitions are:

- Destination resort or resort means a freestanding, land-based structure in which limited gaming may be conducted. A destination resort is a mixed-use development consisting of a combination of various tourism amenities and facilities, including, but not limited to, hotels, villas, restaurants, limited gaming facilities, convention facilities, attractions, entertainment facilities, service centers, and shopping centers.
- Gross receipts means the total of cash or cash equivalents received or retained as winnings by a resort licensee and the compensation received for conducting any game in which the resort licensee is not party to a wager, less any cash taken in fraudulent acts perpetrated against the resort licensee for which the resort licensee is not reimbursed. The term does not include tokens, foreign currency that cannot be converted into U.S. currency, promotional credits or “free plays,” or the amount of extended credit until collected from the customer.
- Licensee means, as the context requires, a resort licensee, supplier licensee, or occupational licensee.
- Limited gaming, game, or gaming means the games authorized pursuant to the Resort Act in a limited gaming facility, including, but not limited to, those commonly known as baccarat, twenty-one, poker, craps, slot machines, video gaming of chance, roulette wheels, Klondike tables, punch-board, faro layout, numbers ticket, push car, jar ticket, pull tab, or their common variants, or any other game of chance or wagering device that is authorized by the commission.
- Qualifier means an affiliate, affiliated company, officer, director, or managerial employee of an applicant for a resort license, or a person who holds a direct or indirect equity interest in the applicant. The term may include an institutional investor. As used in this subsection, the terms “affiliate,” “affiliated company,” and “a person who holds a direct or indirect equity interest in the applicant” do not include a partnership, a joint venture relationship, a shareholder of a corporation, a member of a limited liability company, or a partner in a limited liability partnership that has a direct or indirect equity interest in the applicant for a resort license of 5 percent or less and is not involved in the gaming operations as defined by the rules of the commission.

Section 5: Creates the Destination Resort Commission and specifies its governance. This section specifies that the commission is created in DOR for administrative purposes only, and it

is a separate budget entity not subject to control, supervision, or direction by DOR in any manner.

The commission is exempt from the provisions of s. 20.052, F.S., which creates a public-purpose evaluation of all advisory councils, boards and commissions before they are statutorily created. The commission will consist of seven full-time members:

- Three appointed by the Governor and confirmed by the Senate in the legislative session following the appointments;
- Two appointed by the President of the Senate; and
- Two appointed by the Speaker of the House of Representatives.

For the initial appointments, the Governor's appointees shall serve 2-year terms and the other appointees shall serve 4-year terms; thereafter, all appointees shall serve 4-year terms. Terms expire on June 30 of the applicable year. Any commissioner whose term has expired shall continue serving until a replacement is appointed. Vacancies are filled in the same manner as initial appointments.

SB 2050 specifies that the commissioners must be Florida residents and experienced in corporate finance, tourism, convention and resort management, gaming, investigation or law enforcement, business law, or related legal experience, except that:

- One member of the commission must be a Florida-licensed certified public accountant with at least 5 years of experience in general accounting; and
- One member must have experience in the fields of investigation or law enforcement.

A quorum consists of 4 members.

The bill prohibits the appointment to the commission of:

- Elected officials;
- Persons with a direct or indirect financial interest in applicants for a resort license or resort licensees;
- Persons who are related within the "second degree of consanguinity"³⁴ or affinity to any person licensed by the commission; and
- Persons who have been indicted for, convicted of, pled guilty or nolo contendere to, or forfeited bail for any felony or misdemeanor crime involving gambling or fraud, in any of the 50 states, within the 10 years preceding their appointment.

The Governor will appoint one member of the commission to serve as the chair. The chair will be the administrative head of the commission and would be responsible for setting the agenda for commission meetings and approving all notices, vouchers, subpoenas, and reports required by the act. The bill also provides for a vice chair to be elected by his or her fellow members during the commission's first meeting.

Other governance issues include:

- The commission headquarters will be in Tallahassee;

³⁴ Legally defined as grandparents, siblings, grandchildren, aunts and uncles, nieces and nephews, and first cousins.

- The initial meeting of the commission must be held by October 1, 2011;
- The commission must meet at least monthly;
- The chair or 4 commissioners can call a meeting, upon 72 hours' notice; and
- The commission *in toto* sits as the agency head for purposes of ch. 120, F.S., except that the commission's executive director is the agency head for purposes of final agency action under ch. 120, F.S., for all regulatory issues delegated to the executive director.

Section 6: Specifies the commission's powers and duties. The commission will have jurisdiction over and shall supervise all destination resort gaming activity governed by this act, including the power to:

- Authorize limited gaming at five destination resorts;
- Conduct investigations as necessary to fulfill its responsibilities;
- Use an invitation-to-negotiate process for applicants based on minimum requirements established by this legislation;
- Investigate each applicant for a resort license and determine eligibility, among competing applicants, based on which ones best serve the interest of the residents of Florida based on the:
 - Potential for economic development presented by the applicant's proposed investment in infrastructure, such as hotels and other nongaming entertainment facilities; and the
 - Applicant's ability to maximize revenue for the state.
- Grant licenses;
- Establish and collect fees for conducting background checks on all applicants for licenses and persons who are contracted to perform services at the resorts;
- Issue subpoenas;
- Require a person to file a statement in writing and under oath in response to the commission's investigation;
- Keep accurate and complete records of its proceedings;
- Apply to the courts for injunctive relief to enforce the act and any rules adopted by the commission;
- Establish field offices, as necessary; and
- Suspend or revoke the license of any person found to no longer be qualified. The commission also can deny, revoke, suspend, or place conditions on a licensee who violates any provision of the act, a rule adopted by the commission, or an order of the commission.

Additionally, the commission, the Florida Department of Law Enforcement (FDLE), and local law enforcement agencies have unrestricted access to inspect resort facilities and gaming devices at all times, and share concurrent authority to investigate criminal violations of this act and any other criminal activity that may be occurring at a resort.

Section 7: The commission is authorized to adopt all rules necessary, including emergency rules, to implement, administer, and regulate limited gaming. The bill provides a listing of specific areas in which the commission is authorized to adopt rules, these include the types of games, the time and place for the gaming, and the structures where limited gaming is authorized. The commission also can establish procedures to scientifically test slot machines and other

authorized gaming equipment. The commission can adopt any rule necessary to accomplish the purposes of the act.

Section 8: The commission is authorized to employ sworn law enforcement officers, who must have arrest authority pursuant to s. 901.15, F.S., have full law enforcement powers, and be certified under s. 943.1395, F.S.

Section 9: The commission is authorized to appoint (and remove) a full-time executive director, who will perform all the duties assigned him by the commission, and employee staff and consultants as necessary.

This section also specifies the types of people who may not be hired, depending on their previous 3 years' work history.

Section 10: The commission must adopt a comprehensive code of ethics for its members and staff to follow. Generally, the code of ethics will prohibit commissioners, the executive director, and employees from having a direct or indirect financial interest in the entities they will regulate. It would also prohibit engaging in political activity, including using one's official position to influence the result of an election. Also, employees or agents of the commission will be prohibited from engaging in outside employment related to the activities or persons regulated by the commission, until 5 years after leaving employment or membership on the commission.

Section 11: The commissioners, the executive director, and each managerial employee must file annual financial disclosures. The bill also specifies the circumstances in which commissioners and staff must immediately file disclosures, including matters related to criminal arrests, negotiations for an interest in a licensee or applicant, and negotiations for employment with a licensee or applicant. These persons are also prohibited from engaging in activities that may constitute a conflict of interest; accepting gifts from licensees, applicants, or entities otherwise affiliated with licensees or applicants; and report any attempted bribes.

Section 12: Commissioners, licensees, applicants, or any affiliate or representative of an applicant or licensee are prohibited from engaging directly or indirectly in an *ex parte* communication with a member of the commission concerning a pending application, license, or enforcement action or concerning a matter that likely will be pending before the commission.

Any *ex parte* communication must immediately be reported in writing to the chair and placed on the record. Persons who make the *ex parte* communication must submit to the commission a written description of the communication which identifies the commissioner who received the communication. A commissioner who fails to disclose an *ex parte* communication within 10 days of the communication is subject to removal from office and a civil penalty not to exceed \$5,000.

Any such violation will be investigated by the Commission on Ethics.

Section 13: A violation of the act by a commissioner may result in disqualification or constitute cause for removal by the Governor. The Governor may impose other disciplinary action as determined by the commissioner. Violations by employees may result in termination of employment. If the violation involves an unintentional financial interest in a licensee or

applicant, the person would not have violated the act if they divested their financial interest within 30 days after the interest was acquired.

Section 14: The regulation of gaming at destination resorts is pre-empted to the state, and no local government may enact any ordinance attempting to regulate such activities.

Section 15: SB 2050 establishes a detailed process for awarding destination resort licenses. Licenses will be awarded through an invitation-to-negotiate (invitation) process in which applicants reply on forms provided by the commission in response to the invitation to bid. The commission may stagger its issuance of the invitations, although replies to the invitation to bid must be received by the commission within 6 months of the date the invitations were issued.

After reviewing the replies to the invitation, the commission may select one or more replies and commence negotiations after determining which replies are in the best interest of the state based on the selection criteria. The commission must award a resort license within 12 months after the deadline for submission of the applications. The commission may not award more than five licenses statewide.

Section 16: SB 2050 specifies a number of minimum criteria the commission must use when evaluating resort license applications. Key criteria include:

- The applicant for a resort license must demonstrate that the resort will:
 - Increase tourism;
 - Generate jobs;
 - Provide revenue to the local economy; and
 - Provide revenue to the General Revenue Fund.
- Additionally, the applicant must demonstrate:
 - A history of, or a bona fide plan for, community involvement or investment in the community where the resort having a limited gaming facility will be located;
 - The financial ability to purchase and maintain an adequate surety bond;
 - Adequate capitalization to develop, construct, maintain, and operate the proposed resort and convention center in accordance with the act; and
 - The ability to implement a program to train and employ residents of this state for jobs that will be available at the destination resort, including its ability to implement a program for the training of low-income persons.
- The aesthetic appearance of the proposed resort, if the commission chooses to make this a consideration.
- The applicant must demonstrate how it will comply with state and federal affirmative action guidelines.
- The applicant must demonstrate the ability to generate substantial gross receipts.

This section of the bill also specifies that resort licenses will be issued “only to persons of good moral character who are at least 21 years of age.”

A resort license will not be issued to any applicant, if such applicant, a qualifier, or an institutional investor:

- Has, within the last 10 years, filed for protection under the Federal Bankruptcy Code or had an involuntary bankruptcy petition filed against the applicant;

- Has, within the last 5 years, been adjudicated by a court or tribunal for failure to pay income, sales, or gross receipts tax due and payable under any federal, state, or local law, after exhaustion of all appeals or administrative remedies;
- Has been convicted of a felony under the laws of any state or the United States;
- Has been convicted of any violation under ch. 817, F.S., related to fraudulent practices, or under a substantially similar law of another jurisdiction;
- Knowingly submitted false information in the application for the license;
- Is a member or employee of the commission;
- Was licensed to own or operate gaming or pari-mutuel facilities in this state or another jurisdiction and that license was revoked; or
- Fails to meet any other criteria for licensure set forth in the Resort Act.

In this context, the “conviction” includes an adjudication of guilt on a plea of guilty or *nolo contendere* or the forfeiture of a bond when charged with a crime.

Section 17: SB 2050 specifies the information that must be included in the application. The application must be sworn. Key required information includes:

- A description of the proposed resort, including a description of the anticipated economic benefit to the community, number of employees, a projection of attendance at the resort, a projection of gross receipts, and other information;
- The time-frame for completing the resort;
- A plan for training Floridians for jobs at the resort;
- Identifying information about the applicant and all qualifiers, except those persons who specifically do not have to be identified, such as anyone with less than 5 percent interest in the resort project;
- Identification of elected officials, their spouses, and their children who, directly or indirectly, have any type of financial relationship with the applicant; and
- Fingerprints of the applicant, officers, qualifiers, and any person who will be responsible for operational controls.

The commission, however, is the sole arbiter on what information should be included in the application. It also may order criminal history checks based on the fingerprint data received with the application.

The applicant has a responsibility to file a supplemental report to the application if there is any material change in any circumstance relevant to the commission’s review of the proposal.

Each application must be submitted along with a \$1 million non-refundable application fee to defray the commission’s costs of reviewing it. Additionally, a one-time licensing fee of \$50 million must be submitted along with the application, but this fee is refundable to the applicant within 30 days if the commission denies the application. If the applicant withdraws, the commission only has to refund 80 percent of the licensing fee, also within 30 days.

Section 18: An incomplete application is grounds for denial of an application, under SB 2050. However, if the commission determines that an application is incomplete, the applicant may request an informal conference with the executive director or his designee. The executive

director may grant a 30-day extension to complete an application. If the executive director still finds the application incomplete, the applicant may appeal to the commission – at which point, the issuance of licenses is stayed until the commission rules on the appeal.

Section 19: Provides a limited application process for institutional investors, generally defined as pension funds, public retirement funds, insurance companies, financial institutions, or trusts that hold less than 5 percent of the equity securities or 5 percent of the debt securities of an applicant or affiliate of the applicant, and are a publicly traded corporation. Institutional investors also must file a certified statement that they do not intend to influence or affect the affairs of the applicant or its affiliate, and that the securities of the applicant or affiliate that it holds were purchased for investment purposes only. The commission may require that an institutional investor must be treated as a qualifier if it finds that such investor is in a position to exercise a substantial impact upon the controlling interests of a licensee.

Section 20: The bill also exempts lenders and underwriters as qualifiers, meaning they are not required to be licensed.

Section 21: SB 2050 establishes several conditions for obtaining a new or renewed resort license. The key conditions require that the licensee:

- Comply with the Resort Act and rules of the commission;
- Allow the commission and FDLE unlimited access to and the right of inspection for the areas of the resort where limited gaming activities occur;
- Complete the resort in accordance with the plans and timeframe submitted to the commission in the proposal, unless a waiver has been granted;
- Ensure that the facilities-based computer system is operational and that all accounting functions are structured to facilitate regulatory oversight, which shall require the systems to provide for real-time information to the commission and FDLE;
- Ensure that each game, machine, or device is protected from tampering or manipulation;
- Submit and comply at all times with a detailed security plan;
- Create and file with the commission a written policy for:
 - Creating opportunities to purchase from vendors from this state, including minority vendors;
 - Creating opportunities for employment of residents of this state, including minority residents;
 - Ensuring opportunities for hiring construction services from minority contractors;
 - Ensuring opportunities for employment are on an equal, nondiscriminatory basis;
 - Training employees on responsible gaming and work with a compulsive or addictive gambling prevention program;
 - Implementing a drug-testing program;
 - Using the Internet-based job-listing system of the Agency for Workforce Innovation in advertising employment opportunities; and
 - Ensuring that each slot machine pays out at least 85 percent.

In addition, the resort must keep and maintain permanent daily records of its gaming operations for not less than 5 years.

Section 22: Each destination resort licensee is required to maintain a surety bond, at its own cost and expense. The penal sum³⁵ of the bond is to be determined by the commission and payable to the Governor. The commission shall set the bond at the total amount of the estimated license fees and taxes estimated to become due for the resort. In lieu of a bond, a licensee may instead pay a like amount of funds to the commission.

Section 23: Limited gaming may be conducted at a licensed resort, but only within a designated area of the resort as approved by the commission. Limited gaming activities may not begin until the resort is completed in accordance with the plans submitted to the commission. The resort licensee may only accept wagers from persons at least 21 years of age who are present in the facility, and may set the amount of wagers. The facility may not accept wagers using money, except for slot machine gaming. Further, the gaming facility may be open 24 hours per day, 365 days per year.

Section 24: On each anniversary date of receipt of its resort license, the licensee must pay the commission a \$2 million license fee. The license fee shall be deposited in the Destination Resort Trust Fund to be used by the commission and FDLE for investigations, regulation of resorts, and enforcement.

In addition, each resort licensee is required to pay a gross receipts tax on the gross receipts for limited gaming activities at the resort. Once the resort is complete, the licensee must submit all information, as required by the commission, to determine the infrastructure investment and to set the tax rate for the resort.

The gross receipts tax rate is calculated this way:

- If the total infrastructure investment is \$2.5 billion or more, the gross receipts tax rate is 10 percent;
- If the total infrastructure investment is at least \$1 billion but less than \$2.5 billion, the gross receipts tax is 15 percent; and
- If the total infrastructure investment is less than \$1 billion, the gross receipts tax is 20 percent.

Proceeds of the gross receipts tax will be deposited in the Destination Resort Trust Fund and shall be used to fund the commission's operating costs, pursuant to legislative appropriation.

On June 30 of each year, all unappropriated revenues in excess of \$5 million must be deposited as follows:

- 95 percent of the money in the fund is deposited to the General Revenue Fund;
- 2.5 percent is deposited in the Tourism Promotional Trust Fund for use by the Florida Commission on Tourism;
- 1.25 percent is deposited into the Employment Security Administration Trust Fund for use by the school readiness program; and
- 1.25 percent is deposited into the Transportation Disadvantaged Trust Fund for use by the Transportation Disadvantaged Commission, which oversees locally run programs to provide transportation services to the disabled, elderly, and underprivileged.

³⁵ "Penal sum" is the stated limit of the bond which, in turn, is the limit of the insurer's liability under the bond.

Section 25: SB 2050 requires that FDLE implement the fingerprint requirements, and shall submit the results to the commission. The costs of the fingerprinting and background check shall be borne by the applicant.

Additionally, all the fingerprints must be entered into the statewide database, as authorized in s. 943.05(2)(b), F.S., and available for all specified purposes. The fingerprints also may be forwarded to the FBI.

Any applicant who is fingerprinted and who has been convicted or pleaded guilty or nolo contendere to a disqualifying offense must notify the commission within 48 hours.

Section 26: Each resort licensee is required to train employees on responsible gaming and to work with a program on responsible gambling to recognize problem gambling. The commission is required to contract for services related to the prevention of compulsive and addictive gambling. The contract for the services must require advertising of responsible gambling and the publication of a gambling telephone help line. Each resort licensee is required to fund the program with a \$250,000 annual fee.

Section 27: Suppliers' licenses are required in order to furnish, on a regular or continuing basis, gaming equipment, supplies, devices, or goods or services relating to the realty, construction, or business of a resort licensee. This requirement includes, but is not limited to, manufacturers, distributors, food purveyors, construction companies, and junket enterprises. Each applicant and licensee must pay an annual license fee of \$5,000. A person is not eligible for a suppliers' license if the person has committed a felony, knowingly submitted false information to the commission, the applicant is a member of the committee, the applicant is not a natural person, or the applicant has a resort license or pari-mutuel license in either this state or any other jurisdiction.

All applicants for suppliers' licenses must submit to background investigations and comply with the fingerprint requirements in the act.

The bill authorizes the commission to revoke a license for a violation of the act and commission rules.

Section 28: Any person who wishes to become a gaming employee must apply to the commission for an occupational license; no person may be employed by a resort licensee until that person has an occupational license. The application fee must be set by the commission, but an employee occupational license fee may not exceed \$50. Occupational licensees must be at least 21 years old to perform gaming related functions and at least 18 to perform non-gaming related functions.

All applicants for occupational licenses must submit to background investigations and comply with the fingerprint requirements in the act. The bill authorized the commission to revoke a license for a violation of the act and commission rules. A person who has committed a felony or crime involving dishonesty or moral turpitude in any jurisdiction is not eligible for an occupational license.

Section 29: The commission's executive director may grant temporary suppliers and occupational licenses, under certain conditions. The temporary license expires after 90 days.

Section 30: SB 2050 requires the commission to submit quarterly reports to the Governor, President of the Senate, and Speaker of the House of Representatives. The reports must include:

- A statement of receipts and disbursements related to limited gaming;
- A summary of disciplinary actions taken by the commission, and
- Any additional information or recommendations that the commission believes may improve the regulation of limited gaming or increase the economic benefits of limited gaming to this state.

Section 31: The chair of the commission may assign hearings to two or more members of the commission. Only the commissioners assigned to a hearing can participate in the final decision for the commission on that matter. If only two commissioners are assigned a matter and they cannot decide, the chair may cast the deciding vote. Any party to a proceeding before the commission may request the matter to be heard before the full commission; the full commission must convene within 15 days to hear the matter.

Section 32: If a dispute that involves alleged wins, losses, payments of cash, prizes, benefits, tickets, or other items, or a dispute that involves the manner in which a game, tournament, contest, drawing, promotion, race or similar activity was conducted, cannot be resolved between the licensee and the patron, the licensee must immediately notify the commission if the dispute involves at least \$500.

If the dispute involves less than \$500, the licensee must notify the patron of the patron's right to file a complaint with the commission.

The commission may investigate the matter and may require the licensee to pay restitution to the patron. Failure to notify the commission of a dispute or notifying a patron of his or her right to file a complaint constitutes grounds for disciplinary action against the resort licensee.

Section 33: SB 2050 permits the use of credit instruments. Resort licensees may accept incomplete credit instruments if they are signed by the patron and the amount is completed in numbers; the resort licensee may complete the incomplete instrument. The resort licensee also may accept a credit instrument payable to an affiliate of the licensee. In addition, the resort licensee may accept the credit instrument before, during, or after the patron has incurred the debt with the resort.

However, SB 2050 also allows patrons to establish an account by a cash deposit, recognized traveler's check, or any other credit instrument that is equivalent to cash.

The bill also establishes that a patron's mental disorder is not a defense against paying the debt; nor does the failure of a resort to comply with all of the requirements of this section erase the debt.

The commission is authorized to adopt rules to address the credit instrument issues.

Section 34: SB 2050 provides that a person may request to be excluded from all limited gaming facilities by completing a self-exclusion form and submitting it to the commission. The form requires the patron to include his or her name, date of birth, and other identifying information. The form also requires the individual to indicate how long he or she wishes to be excluded from the limited gaming facilities.

Section 35: Amends s. 849.15, F.S., to reference the Destination Resort Act.

Section 36: Amends s. 849.231, F.S., to exempt the limited gaming at destination resorts from the statutory prohibition against possession of gambling devices in Florida.

Section 37: Amends s. 849.25, F.S., to correct cross-references and to exempt the limited gaming at destination resorts from the statutory prohibition against bookmaking.

Section 38: Specifies that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Constitution is silent on the subject of casino gaming. However, the Florida Constitution does not prohibit the Legislature from creating laws to authorize, regulate, or tax gaming in the state. With regard to gaming, the Florida Constitution only addresses the subjects of lotteries and slot machine gaming. The Florida Constitution prohibits lotteries, except pari-mutuel pools permitted by state law,³⁶ but specifically allow for state operated lotteries.³⁷

Even though the Florida Constitution does not specifically prohibit any form of gaming other than lotteries that are not state operated, the provision that expanded the pari-mutuel locations that can offer slot machine gaming is being challenged as violating s. 23, Art. X, Florida Constitution. These lawsuits challenge the Legislature's authority to authorize slot machine gaming outside the pari-mutuel facilities enumerated in s. 23, Art. X, of the

³⁶ Section 7, Art. X, Florida Constitution.

³⁷ Section 15, Art. X, Florida Constitution.

Florida Constitution, which references pari-mutuel facilities that were existing and had conducted live racing or games in that county during each of the last 2-calendar years before the effective date of the amendment (2004). The trial court upheld the constitutionality in Leon County.³⁸ That decision is on appeal to the First District Court of Appeals.³⁹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Applicants for a destination resort license would pay an application fee of \$1 million dollars to defray the costs of investigating and reviewing the application.

The application also must include a one-time licensing fee of \$50 million, which the commission must refund within 30 days of denying an application. If an applicant withdraws its application after the application deadline, the commission must refund 80 percent of the licensing fee within 30 days after the application is withdrawn.

Each resort licensee would be required to pay \$2 million annually to the commission as a license fee. In addition, each resort licensee would pay a gross receipts tax. The tax rate would be dependent on the licensee's investment in infrastructure. Once the resort is complete, the licensee must submit all information, as required by the commission, to determine the infrastructure investment and to set the tax rate for the resort.

If the total infrastructure investment is \$2.5 billion or more, the gross receipts tax rate is 10 percent. If the total infrastructure investment is at least \$1 billion but less than \$2.5 billion, the gross receipts tax is 15 percent. If the total infrastructure investment is less than \$1 billion, the gross receipts tax is 20 percent.

Suppliers' licensees would be required to pay an annual license fee of \$5,000, while the fee for an occupational licensee may not exceed \$50.

The state's Revenue Estimating Conference has not met to estimate the revenue impact of SB 2050.

However, the casino industry estimates that implementation of a similar bill filed this session may:

- Generate total non-gaming revenue for the first year of \$85.4 million;

³⁸ See Order on Plaintiff's Motion for Summary Judgment, consolidated cases, *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, No. 2010 CA 2257 and *Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, No. 2010 CA 2132 (Fla. 2d Cir. Ct. December 14, 2010).

³⁹ See *Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D11-130 (Fla. 1st DCA) and *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D10-6780 (Fla. 1st DCA).

- Induce by the third year \$64.5 million in convention and local bed tax collections; and
- Increase collections of corporate income taxes and sales taxes by nearly \$52 million.

B. Private Sector Impact:

The industry estimates that five resorts, if authorized by the commission, would create 140,000 construction jobs and would generate \$10 billion in construction costs.

The industry estimates that the five resorts, if built, would attract 5.26 million out-of-market visitors, including more than 313,000 convention visitors.

C. Government Sector Impact:

Indeterminate. However, the bill authorizes fees projected to be sufficient to pay the costs of administering the act.

VI. Technical Deficiencies:

Sections 35-37 of the bill refer to the “sections 3 through 35” of the Destination Resort Act in their cross-references. Actually, only sections 3 through 34 are part of the Destination Resort Act. It is also unusual to refer in substantive law to the unnumbered sections of a particular act, because the numbering could change as the bill travels through the committee and floor process. Perhaps the cross-references should refer simply to the “Destination Resort Act.”

Also, it is typical in statutes for appointed commissioners to be term-limited. SB 2050 does not limit the Destination Resort commissioners to a specific number of terms.

VII. Related Issues:

State revenue-sharing with the Seminole Indian Compact relies on continued exclusivity of casino-style and Class III gaming. The authorization for full commercial casinos would constitute a casino style and Class III gaming expansion and would affect the revenue-sharing payments that the Tribe is required to make to the state under the compact. Any cessation or reduction of revenue sharing payments upon the expansion of casino gaming would depend on the location of the new casinos. It is important to stress that any cessation or reduction of revenue sharing payments would only occur when the first Class III or other casino-style game is played. The mere authorization of Class III gaming or other casino-style gaming would not affect the payments.

It is also important to note that the state’s expansion of Class-III gaming or casino-style gaming would not mean that the state had violated its compact with the Tribe. The compact specifies the consequences, particularly the financial ramifications, if the state elects to expand gaming in this state, and does not expressly prohibit any such expansion.

If the Destination Resort Commission approves a destination resort with limited gaming in any location outside of Miami-Dade and Broward Counties, all of the Tribe’s revenue-sharing

payments would stop once the first game is played.⁴⁰ If the Destination Resort Commission approves a destination resort with limited gaming inside of Miami-Dade and Broward Counties, but the location is not at a pari-mutuel facility, the Tribe would continue to make revenue-sharing payments, but the Tribe would exclude the net win from their Broward facilities. According to the division, the net win from the Tribe's Broward facilities equals approximately 47 percent of the Tribe's total net win. Therefore, if casino-style gaming were expanded and limited to Miami-Dade and Broward Counties, the Tribe's payments would be reduced by approximately 47 percent.

In addition, if the destination resort with limited gaming is authorized for any location in Miami-Dade or Broward counties within the first 5 years of the compact, the guaranteed minimum payment and the \$1 billion guarantee for the first 5 years of the compact would no longer apply. The Tribe's payments would be based on the applicable percentage of net win.

Once the new gaming begins at licensed destination resorts, the Tribe may continue to offer the covered games authorized in the compact plus any additional games that are authorized for the destination resorts.⁴¹ The Tribe will have to renegotiate a new Compact for Class III games when the Compact expires at the end of its 20-year term,⁴² but it is not clear what reason the Tribe would have to renegotiate the revenue-sharing terms if casino-style gaming is authorized at destination resorts in the state. However, the Tribe would have to negotiate a new compact at the end of the current compact's term before it could continue to offer the covered games.⁴³

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁴⁰ See Part XII. A., *Gaming Compact*, *supra* n. 29.

⁴¹ See the definition of covered games at Part III.F.4., *Gaming compact*, *supra* at n. 29.

⁴² See Part XVI.B., *Gaming Compact*, *supra* at n. 29.

⁴³ IGRA at 18 U.S.C. s. 2710(d)(1)(C).