

**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 Criminal Justice Committee

BILL: CS/SB 812

INTRODUCER: Regulated Industries Committee and Senator Diaz de la Portilla

SUBJECT: Internet Poker

DATE: April 7, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Young/Harrington	Imhof	RI	<b>Fav/CS</b>
2.	Erickson	Cannon	CJ	<b>Pre-Meeting</b>
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill provides for the creation of an intrastate Internet poker network. It allows for the creation of the network through the use of up to three hub operators and provides for licensed cardroom operators to provide portals for consumers to access the Internet poker websites.

The bill also requires the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation to provide oversight of Internet poker activities. The bill sets out a licensing structure to license hub operators and cardroom affiliates. It also provides for the selection of hub operators through a competitive procurement process.

The bill has an effective date of July 1, 2011.

This bill creates the following section of the Florida Statutes: 849.087.

## II. Present Situation:

Gambling is generally prohibited in Florida.<sup>1</sup> There are multiple exceptions to the general prohibition found in ch. 849, F.S. For example, poker is authorized to be played in Florida as a penny-ante game under s. 849.085, F.S., or in a cardroom located at a licensed pari-mutuel facility as provided in s. 849.086, F.S.

A “penny-ante game” is a game or series of games of “poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg in which the winnings of any player in a single round, hand, or game do not exceed \$10 in value.”<sup>2</sup> It must be played in a dwelling, no admission or fee may be charged, no player may be solicited by advertising, a person must be at least 18 years old to play, and any debt incurred is unenforceable.<sup>3</sup>

A “dwelling” is defined as a residential premise that is owned or rented by a participant in the game. It includes “the common elements or common areas of a condominium, cooperative, residential subdivision, or mobile home park of which a participant in a penny-ante game is a unit owner, or the facilities of an organization which is tax-exempt under s. 501(c)(7), of the Internal Revenue Code.”<sup>4</sup> It also includes a college dormitory or common recreational area of the college dormitory, and a community center owned by a municipality or county.<sup>5</sup>

Poker may also be played in a cardroom.<sup>6</sup> A cardroom is a facility where authorized games are played for money or anything of value and the public is invited to participate in the games and is charged a fee by the facility operator.<sup>7</sup> Only licensed pari-mutuel permit holders may operate cardrooms in the state.<sup>8</sup> Currently, there are 23 pari-mutuel facilities operating cardrooms.

### **Unlawful Internet Gambling Enforcement Act of 2006**

The Unlawful Internet Gambling Enforcement Act (act) does not make Internet gambling illegal. Instead the act targets financial institutions in an attempt to prevent the flow of money from an individual to an Internet gaming company because most owners and operators of such sites are located overseas, outside of the jurisdiction of the United States.

The act does not prohibit intrastate Internet gambling as long as the bet or wager is initiated or received within the state. According to the Poker Voters of America, this provision would allow Internet poker sites in Florida as long as the servers and players of Internet poker are both located within the state.<sup>9</sup>

Unlawful Internet gambling does not include a bet or a wager initiated and received within a single state (intrastate transactions), if such a transaction is authorized by state law and that law

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<sup>1</sup> See s. 849.08, F.S.

<sup>2</sup> Section 849.085(2)(a), F.S.

<sup>3</sup> Section 849.085(3), F.S.

<sup>4</sup> Section 849.085(2)(b), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 849.086, F.S.

<sup>7</sup> Section 849.086(2)(c), F.S.

<sup>8</sup> Section 849.086(2)(f), F.S.

<sup>9</sup> Presentation by Melanie Brenner, Executive Director of Poker Voters of America, before the Florida Senate Committee on Regulated Industries, February 16, 2010 (presentation on file with the committee).

requires age and location verification as well as security that ensures the age and location requirements are met.<sup>10</sup>

### **Other Federal Statutory Provisions**

There are other federal statutory provisions that may have an effect on the legality of Internet poker, including, but not limited to: the Wire Act of 1961; the Travel Act of 1961; the Money Laundering Control Act of 1986; the Transportation of Gambling Devices Act of 1951; the Interstate Transportation of Wagering Paraphernalia Act; and the Illegal Gambling Business Act.

These provisions, however, all seem to rely on the *interstate* aspect of these actions as well as relying on an underlying violation in order to bring charges under these provisions.

### **Internet Poker in other States**

Intrastate Internet poker is not presently authorized in any state. New Jersey passed legislation this year that would have authorized casinos in Atlantic City to offer Internet gaming to residents of the state of New Jersey.<sup>11</sup> The Governor vetoed the legislation this month. Nevada, California, and Iowa are currently considering legislation to legalize intrastate Internet poker.

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

The bill creates s. 849.087, F.S., and authorizes intrastate Internet poker in the state.

**Section 1.** Provides that the act may be cited as the “Internet Poker Consumer Protection and Revenue Generation Act.”

**Section 2.** Creates the regulatory framework for the act.

*Subsection (1)* provides legislative intent for the creation of the act: to ensure consumer protection and generate revenue for the state through legalized intrastate Internet poker activities. The intent is to capture revenues that are otherwise flowing to offshore and unregulated Internet poker operators.

*Subsection (2)* provides definitions, including, but not limited to, the following:

- “Authorized game” means a game or series of games of poker, which may include tournaments, which are played in a nonbanking manner on a state Internet poker network.
- “Cardroom affiliate” means a licensed cardroom operator as defined in s. 849.086 who maintains an Internet site as a portal into a state Internet poker network.
- “Internet poker hub operator” or “poker hub operator” means a computer system operator that is licensed by the state and contracts with the state to operate a state Internet poker network.
- “Intrastate Internet poker” means authorized games of poker played over the Internet by registered players who are physically present within the borders of this state at the time of play.

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<sup>10</sup> 31 U.S.C. s. 5362(10)(B).

<sup>11</sup> Senate Bill 490 by Senator Raymond J. Lesniak (D. Union, N.J.).

*Subsection (3)* authorizes intrastate Internet poker. Players located within the state of Florida are authorized to play intrastate Internet poker on a licensed state poker network, and licensed Internet poker hub operators are authorized to operate a state Internet poker network.

*Subsection (4)* provides that the Division of Pari-mutuel Wagering (division) of the Department of Business and Professional Regulation shall administer the act. The division is authorized to adopt rules for administration, licensing, operation of the technical systems for the state poker network, the security of financial information of registered players, bonuses, awards, promotions, and other incentives, as well as the distribution of poker income and the imposition and collection of all taxes and fees.

Further, the division has the power to: investigate and monitor the operation of a state Internet poker network and the playing of authorized games; review the books, accounts, and records of any current or former Internet poker hub operator or cardroom affiliate; suspend or revoke any license, after a hearing, for any violation of this section; take testimony, issue subpoenas; monitor and ensure the proper collection of taxes and fees to the state; monitor, audit, and verify the cash flow and accounting of a state Internet poker network revenue for any given operating day; and ensure that all gaming is conducted fairly and that all personal and financial information provided by registered players is protected by the Internet poker hub operator.

*Subsection (5)* requires Internet poker hub operators to be licensed prior to operating an Internet poker network within this state. Any application must be completed on forms provided by the division and the application must contain all of the information the division determines by rule, is needed to determine the person's eligibility for the license. An applicant must provide all documentation required in a timely fashion and the documentation must be appropriate, current, and accurate. The Internet poker hub operator is required to notify the division anytime there is any change in ownership of the applicant or licensee of five percent or more for division approval. Further, any applicant for a hub operator license and each licensee must comply with the fee requirements in the act.

*Subsection (6)* requires the division to select no more than three Internet poker hub operators through a competitive procurement process. The applicants must demonstrate the ability to ensure that intrastate Internet poker is offered only to register players who are at least 18 years of age and are present within the borders of the state at the time of play. Further, the division must review the liquidity of the state Internet poker network annually to determine if additional hub operator licenses should be granted; however, no more than three licenses may be granted at any time.

*Subsection (7)* provides minimum qualifications for an Internet poker hub operator:

- The entity must be authorized to conduct business in the state.
- The applicant must not have accepted any wager of money or other consideration on any online gambling activity from any Florida resident since October 13, 2006.
- The executives and key employees must meet the requirements to obtain intrastate Internet poker occupational licenses from the division.

- The applicant must have existing and established experience with Internet gaming, or be licensed to conduct Internet gaming activities, in one or more jurisdiction anywhere in the world where Internet gaming is legal and regulated.
- The applicant and any entity with an ownership interest in the applicant must have demonstrated compliance with all federal and state laws in the jurisdictions where they provide services.
- The applicant must provide all necessary documentation and information relating to all subcontractors of the applicant.
- The applicant must have provided a description of how it will facilitate compliance with all of the standards set forth in the section, including, but not limited to:
  - Registered player processes and requirements relating to intrastate play, age verification, and exclusion of problem gamblers.
  - Network system requirements.
  - Gaming systems.
  - Ongoing auditing by the division and accounting systems.
- The applicant must have provided all other documentation or information that the division, by rule, has determined is necessary to ensure that the applicant is legally, technically, and financially qualified to enter into a contract to become the state's Internet poker hub operator.

*Subsection (8)* provides application requirements for an Internet poker hub operator. An applicant must:

- Provide documentation establishing that the applicant is authorized to do business in the state, financial information, and any other document necessary to prove that the applicant is financially qualified to perform its obligations as an Internet poker hub operator.
- Provide information about any subcontractors of the applicant.
- Provide documentation establishing how the applicant will comply with the provisions in the act, including how the applicant will verify age, only allow intrastate play, and ensure that the games are legal, independent, and fair.
- Pay all fees required in the act upon initial application to the division.

Subsection (9) requires that the Internet poker hub operator be financially and otherwise responsible for the operation of the state Internet poker network. To ensure the Internet poker hub operator's financial ability to be responsible, the licensee must provide evidence of a surety bond in the amount of \$1 million, payable to the state for each year that the licensee is licensed to be an Internet poker hub operator. The bond shall be issued by a surety or sureties licensed to do business in the state, and the bond shall guarantee that an Internet poker hub operator fulfills all financial requirements of the contract. The bond will be kept in full force and effect by an Internet poker hub operator for the term of the license.

Subsection (10) provides contractual obligations of an Internet poker hub operator. A licensee must not only comply with this section but also with all terms of the contract between the entity and the state. The contract between the division and the Internet poker hub operator shall constitute the contract between the parties and govern the interpretation of their relationship. The contract is for a five year term and at the end of that term may be renewed for a period equal to

the original contract if both parties agree. The contract may be amended by a mutual written agreement of the parties.

Further, opportunities are provided for the hub operator to terminate the contract. First, if this section is amended, the Internet poker hub operator is given the power to declare the contract null and void within 90 days after the effective date of the amendment and the Internet hub operator must provide at least 60 days prior written notice of the intent to declare the contract null and void, otherwise, the Internet poker hub operator agrees to be bound by the amendments to this section. Second, in the event that a change in federal law renders the provision of intrastate Internet poker illegal, an Internet poker hub operator or the division may abandon the contract after providing the other party with 90 days prior written notice of their intent to do so.

Further, if there is a dispute over the contract, either party may take the issue to an administrative law or circuit court for an initial interpretation of the contract and the rights and responsibilities in the contract. It is unclear in what forum the dispute is to be filed.

*Subsection (11)* requires that a cardroom affiliate be licensed prior to operating a portal. In order to be eligible for a license, the cardroom affiliate applicant must be licensed under s. 849.086, F.S., actively operate a cardroom with a minimum of 10 licensed tables, and comply with all the requirements of s. 849.086, F.S. Prior to operating the portal, the cardroom affiliate licensee must enter a contractual relationship with one of the Internet hub operators and must file a copy of the contract with the division.

Once a license is issued, renewal of the license is to be made in conjunction with the applicant's annual application for its cardroom and pari-mutuel licenses. The application for a cardroom affiliate license must contain all of the information required by rule, by the division.

In order for a cardroom affiliate to be eligible for license renewal, they must have an active portal and must have contributed at least one percent of the total revenue generated from the play of intrastate Internet poker from the hub with which the cardroom affiliate has a contract on file at the division.

The cardroom affiliate must pay an annual licensure fee of \$1,000. The division is authorized to adopt rules regarding cardroom affiliate licenses and renewals.

*Subsection (12)* requires any person employed by an Internet poker hub operator or a cardroom affiliate in any capacity related to intrastate Internet poker to be licensed by the division. An Internet poker hub operator or a cardroom affiliate is prohibited from contracting with or doing business with any business unless they hold an occupational license issued by the division. The division shall, by rule, institute a schedule for applications of such licenses, the application forms required, and the rules regarding licenses and renewal. The license is valid for three years once the full fee is paid to the division. The division is to determine the amount of the license fee by rule, but the employee fee is not to exceed \$50 and the business fee is not to exceed \$1,000. If the required fee is not paid, disciplinary action may be taken by the division against the Internet poker hub operator or the cardroom affiliate. Current cardroom licensees do not have to pay the fee.

*Subsection (13)* provides that the division may deny, revoke, suspend, place conditions or restrictions on, the license of any person or entity who meets any of the following criteria:

- Been refused a license in any other state by the governmental body having jurisdiction.
- Been under suspension or has any unpaid fines in any other state or jurisdiction.
- Violated this section or any of the rules of the division governing conduct of persons holding such licenses.
- Been convicted of a capital felony or any other felony, in this state or any other jurisdiction, involving:
  - Arson.
  - Any offense involving a controlled substance.
  - Any crime involving a lack of good moral character.
- Had a license revoked by this state or any other jurisdiction for any gaming related offense.
- Been convicted of a felony or misdemeanor, in this state or any other state, or under the laws of the United States, related to gambling or bookmaking.

*Subsection (14)* provides that all employees of the Internet poker hub operator or cardroom affiliate must submit fingerprints for a criminal history check. The person whose record is being checked is also required to pay the costs of the investigation. The fingerprints will be kept on the statewide database and shall be forwarded to the Federal Bureau of Investigation.

*Subsection (15)* requires the Internet poker hub operator to provide the division with a description of any game of poker and the betting rules it proposes to offer to registered players and all documentation relating to development and testing of the game's software. Once they have provided this information, the Internet poker hub operator is authorized to begin offering the game and if the division does not object to the game within 30 days of receipt of the information, the game will be considered authorized and the hub may continue to operate the game. All games are required to be operated strictly, within the game and betting rules. In order to ensure that all games are run fairly, the Internet poker hub operator must provide the following information through the game display:

- The name of the game.
- Any restrictions on play.
- The rule of the game.
- All instructions on play of the game.
- The unit and total of bets permitted.
- The player's current account balance, which must be shown in real time.
- Any other information that the Internet hub operator determines is necessary for the registered player to have in real time to compete fairly in the proposed or authorized game.

Further, the Internet poker hub operator must institute controls and technology to ensure the ability to minimize fraud or cheating through collusion. The hub operator must also take steps to stop such activities and inform the division once they are made aware of the existence of the cheating or fraud. The hub operator is required to investigate any such complaints made, and submit a report to the division within 24 hours of the complaint and continue to update the division every 24 hours until the investigation is complete. A registered player is not permitted to

bring an action for damages against a hub operator for attempting to prevent fraud or cheating if the hub operator can demonstrate that it acted to prevent such actions as soon as they became aware of them. Finally, if the software does not allow the completion of the game, the hand is to be voided and all funds related to the game shall be returned to the registered player's account.

*Subsection (16)* provides requirements for registered players:

- All registered players must be located within this state at the time of play of intrastate Internet poker.
- A person who has not reached 18 years of age may not be a registered player or play intrastate Internet poker.
- All Internet poker hub operators and cardroom affiliates shall exclude from play any person who has submitted a completed Internet Poker Self-Exclusion Form.

When an Internet poker hub operator receives a Self-Exclusion Form, the operator or cardroom affiliate shall immediately provide a copy of the form to each Internet poker hub operator, each cardroom affiliate and the division. Further, a person may not bring an action for negligence or any other claim against a hub operator or cardroom affiliate if they have filled out a Self-Exclusion Form and they gain access and play despite the request to be excluded. Each hub operator and cardroom affiliate must prominently display a link to the responsible gaming organization that is under contract with the division under ch. 551, F.S.

*Subsection (17)* requires the Internet hub operator to register players and to establish accounts for those players. A person may not play unless they have registered an account with the Internet poker hub operator. In order to establish an account a person must provide:

- First name and surname.
- Principle residence address.
- Telephone number.
- Social security number.
- Legal identification or certification to prove that the person is at least 18 years of age.
- Valid email address.
- And the source of funds to be used to establish the account after the registration process is complete.

The Internet poker hub operator is not allowed to release the personal information of a registered player to non-government third parties except for subcontractors. A governmental agency may release such information if they have received a court order to subpoena the information. The hub operator must require the player to agree to their terms of use. The hub operator is also given the ability to revoke or suspend the account of a registered player if the player has participated in illegal activity on a state Internet poker network. The Internet poker hub operator is prohibited from extending credit to any registered player, and the operator must provide the registered player with the opportunity to set their own options, such as limiting the amount of deposit entered in one day, limit on the amount of losses that can incur in a period of time, set a limit on the amount of time that may be spent playing, or other such personal controls.

*Subsection (18)* requires an Internet poker hub operator to keep a book of registered player accounts, regularly audit the accounts, and make all financial information available to the division upon request. These reports must include:

- Monthly auditable and aggregate financial statements.
- Calculation of all fees payable to the government.
- Identity of all players.
- The balance of the player's account at the start of the session of play.
- The wagers placed on each game, time stamped by the game server.
- The result of each game, time stamped by the game server.
- The amount won or lost by the player.
- The balance on the player's account at the end of each game.

The players' accounts must be reconciled on a monthly basis.

*Subsection (19)* requires an Internet poker hub operator to establish a physical site in the state to house the server and all technical components and equipment necessary for the conduct of intrastate Internet poker. In addition, managerial employees of the hub operator who manage the day-to-day operations of the intrastate Internet poker network must reside in the state.

The Internet poker hub operators must utilize technical systems that materially aid the division in fulfilling its regulatory, consumer protection, and revenue-raising functions and allow the division unrestricted access to and the right to inspect the technical systems. The Internet poker hub operator is further required to ensure that the system is protected from tampering or manipulation and document all procedures for how the system and the games operate.

*Subsection (20)* authorizes the Internet poker hub operator to charge a fee for the playing of games or tournaments. Those fees may be handled in any of the following ways:

- Per hand charge.
- Flat fee.
- Hourly rate.
- A rake subject to the posted maximum amount, but not based on the amount won by players.

The fee must be posted on the screen prior to the start of the game.

*Subsection (21)* requires that an entity acquire a valid intrastate Internet poker business occupational license, issued by the division, in order to partner with an Internet poker hub operator or a cardroom affiliate. Any employee of the division is prohibited from being an officer, director, owner, or employee of any person or entity issued a license by the division or from having any interest in or do business with such a person or entity. Employees of the division or relatives living in the household of the employee are prohibited from playing on the network at any time.

*Subsection (22)* provides that it is illegal to play Internet poker in the state of Florida, unless such play complies with the laws of this state. Any person who assists in making or allows to be made

a false statement on any document required under this section is subject to an administrative fine of up to \$10,000. Also, any person who manipulates, or attempts to manipulate the outcome, payoff, or operation of the play of intrastate Internet poker commits a third degree felony.<sup>12</sup>

*Subsection (23)* provides fees for the regulation of Internet poker activity:

- Upon application, each Internet poker hub operator applicant must submit \$25,000 to compensate the division for an investigation of the applicant.
- Upon application, and annually thereafter, each Internet poker hub operator is required to pay a nonrefundable \$500,000 license fee.
- Upon application, and annually thereafter, each cardroom affiliate is required to pay a nonrefundable license fee of \$1,000.

*Subsection (24)* requires the Internet poker hub operator to pay the division a nonrefundable \$10 million and provides that this payment shall be considered an advance on the taxes to be paid to the state. The Internet hub operator shall be credited this money against gross receipts monthly until the amount is recouped by the Internet hub operator.

*Subsection (25)* provides that the Internet poker hub operator pay the state a tax of 10 percent of the operator's monthly gross receipts derived from play. These payments shall be made on the fifth day of each calendar month and be deposited into the Pari-mutuel Wagering Trust Fund. Any licensee who fails to make the required tax payment is subject to an administrative fine of up to \$10,000 for each day that the required payment is late.

*Subsection (26)* provides a distribution calculation for the income derived from the play of internet poker. The 90 percent remaining after the 10 percent tax has been paid to the state, shall be divided in the following way:

- Seventy percent of the remaining money is to be distributed to the cardroom affiliates:
  - Fifty percent shall be divided and distributed based on the affiliates' total rake from the previous fiscal year divided by the total previous year's rake as determined by the division.
  - Fifty percent shall be divided and distributed based on the amount wagered for the previous month through the cardroom affiliates portal as determined by the division, divided by the total amount wagered through all the cardroom affiliate's portals.
  - If two or more cardroom affiliates join together to operate a portal, their wagers and rake shall be combined.
  - Each license holder that receives payment under this subsection is required to use at least 4 percent of its monthly gross receipts from Internet poker to supplement pari-mutuel purses or prize money during the current meet or the next ensuing meet.
- Twenty-five percent of the remaining money shall be retained by the Internet hub operator to pay all costs of operations.
- Four percent of the remaining money shall be retained by the Internet poker hub operator to fund statewide advertising, marketing, and promotion of play.

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<sup>12</sup> A third degree felony is punishable by up to 5 years in state prison and a fine up to \$5,000 may also be imposed.

- One percent is to be used to fund services related to the prevention and treatment of problem gambling by the entity that is under contract with the division to perform such duties.

Further, these distributions are to be made by the twentieth day of each calendar month and the division is to ensure that all distributions are made in accordance with this section.

*Subsection (27)* authorizes the division to revoke, suspend, or deny a license to an Internet poker hub operator or cardroom affiliate who has violated this act or any of the rules adopted by the division. Further, if a cardroom affiliates' pari-mutuel permit or license is suspended or revoked pursuant to ch. 550, F.S., or it's cardroom operator's license is suspended or revoked pursuant to s. 849.086, F.S., the division must also revoke or suspend the cardroom affiliate license.

*Subsection (28)* provides that the division may impose an administrative fine not to exceed \$10,000 for any person violating this section. In addition, the division may suspend or revoke a cardroom affiliate license or Internet poker hub operator license for any willful violation of this act. The division also has the discretion to invoke an administrative fine not to exceed \$100,000 for a willful violation.

*Subsection (29)* provides the division with rulemaking authority for the act.

*Subsection (30)* declares that the Legislature has the exclusive authority over the conduct of intrastate Internet poker and that only the division and other authorized state agencies shall administer this act.

**Section 3.** Provides that the act shall take effect on July 1, 2011.

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

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

None.

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

None.

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

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

The bill provides an annual license fee of \$500,000 and an initial payment of \$10 million to be credited against the 10 percent gross receipts tax for the hub operators. The cardroom affiliates are required to pay a \$1,000 license fee per year. The occupational

license fee is \$50 for new employees of the poker hub or cardroom affiliate. Nonemployees supplying goods and services must pay a license fee of \$1,000 annually.

**B. Private Sector Impact:**

Based on the tax revenue estimates, it is believed that intrastate Internet poker would have a positive effect on the pari-mutuel industry through increased purse amounts and additional revenues generated as a result of becoming a licensed cardroom affiliate.

All employees of the Internet poker hub operator or cardroom affiliate must submit fingerprints for a criminal history check. The person whose record is being checked is also required to pay the costs of the investigation.

**C. Government Sector Impact:**

The Revenue Estimating Conference met on February 4, 2011, and discussed the House companion bill, HB 77. Pertinent to tax revenue, they estimate that HB 77 would raise \$10.5 million in FY 2011-2012, nothing for FY 2012-2013, \$4.7 million in FY 2013-2014, and then \$7.2 million in FY 2014-2015.

The Department of Business and Professional Regulation estimates that if enacted, the legislation could provide \$10,585,000 in revenue to the state in FY 2011-2012. This revenue will be in the form of license fees, application fees, and net taxes paid. In FY 2012-2013 the estimated revenue is expected to drop to \$560,000, which will be based on license fees. This drop is a result of the \$10,000,000 in taxes that the hub operators are required to pay up front and then not required to pay taxes until the amount exceeds the \$10,000,000 already paid. Then in FY 2013-2014, the revenue to the state is expected to be \$6,460,000.

The net revenue to the state, after the costs of regulation, administration, and new personnel is subtracted is estimated to be \$9,363,702 for FY 2011-2012, \$375,600 for FY 2012-2013, and \$5,803,600 for FY 2013-2014.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill does not indicate whether a hub operator may decline to partner with a cardroom affiliate or whether a cardroom affiliate may partner with more than one hub operator.

The legalization of Internet poker in Florida may affect the state's compact with the Seminole Indian Tribe of Florida (tribe). The tribe would not be required to make the Minimum Guaranteed Payments<sup>13</sup> if the state affirmatively allows Internet or online gaming and the Tribe's

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<sup>13</sup> The payments are \$150 million for the first two years of the compact, \$233 million for the next two years, and \$234 million for the last year for a total of \$1 billion. See Parts III.L and III.M of the compact.

net win for all of its gaming facilities combined drops more than 5 percent below its Net Win for the previous 12 months.<sup>14</sup> However, the Tribe would still be required to make payments based on the Percentage Revenue Share Amount,<sup>15</sup> which is a graduated scale that ranges from 12 percent of Net Win up to \$2 billion and 25 percent of Net Win greater than \$4.5 billion.<sup>16</sup>

The Minimum Guaranteed Payments would be reinstated for any subsequent Revenue Sharing Cycle if the Net Win rises above the amount of the 5 percent reduction. There would be no reduction if the decline in the Net Win were due to an Act of God, war, terrorism, fire, flood, or accidents that damage the Tribe's facilities. There would also not be a reduction if the Tribe offered Internet or online gaming as authorized by law.<sup>17</sup>

Revenue sharing with the Seminole Indian Compact relies on continued exclusivity of casino style and Class III gaming. Although the legalization of intrastate Internet poker may constitute an expansion of gaming, the Compact provides that payments will not be reduced or cease unless the Tribe's net win falls more than 5 percent after Internet gaming begins. Even if the Tribe's net win decreases by more than 5 percent, the Tribe will continue to revenue share with the state, except the Tribe will make payments based on the Percentage Revenue Share Amount instead of the Minimum Guaranteed Payment amounts.

Because we are still in the first year of the contract, there is insufficient data to indicate whether the state will suffer a reduction in payments if the Tribe switches and begins making payments based on the Percentage Revenue Share Amount. Some reports have indicated that the Tribe is grossing \$2 billion in annual revenues; if those figures are correct, the Tribe would be making approximately \$240 million per year in payments based on a 12 percent revenue share payment, which is higher than the current \$150 million Guaranteed Payment.

In addition, if the Tribe conducts Internet gaming, the Tribe must continue to make payments under the Guaranteed Minimum Payment structure. Because of the uncertainty of whether the Tribe will begin Internet gaming and whether the Tribe will experience any decrease in Net Win, it is not possible to predict if the state will experience a decrease in revenue sharing payments.

## VIII. Additional Information:

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

#### **CS by Regulated Industries on March 16, 2011:**

The CS makes technical changes to the bill to correct the name of the Unlawful Internet Gambling Act, to delete duplicative information in the bill, to reorder subsections, and to remove references to subcontractors. The CS removes criteria for licensed Internet poker hub operators that required the operator to have experience in the United States in a licensed gaming activity. The CS requires Internet poker hub operators to maintain an instate premise for the operation of the hub. The CS removes the limitation of only 3

<sup>14</sup> Part XI.B.3., *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida*, July 6, 2010.

<sup>15</sup> *Id.*

<sup>16</sup> See Part XI.B.1.(b) of the compact for the complete percentage payment schedule.

<sup>17</sup> *Supra* at n. 2.

registered poker player accounts per person. In addition, the CS provides that a cardroom affiliate must contract with an Internet poker hub operator prior to operating a portal.

**B. Amendments:**

None.

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

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