

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1383 Gaming

SPONSOR(S): Schenck

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Gaming	21 Y, 0 N, As CS	Stranburg	Morton
2) Regulatory Affairs Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill consolidates oversight of all gaming under a newly created Department of Gaming Control (DGC), headed by a newly created Gaming Control Commission (commission). The commission is also designated as the state compliance agency under the Seminole Gaming Compact. Commission members are appointed by the Governor, from a list provided by a joint legislative nominating committee and subject to Senate confirmation. Members are subject to general ch. 112, F.S., ethics requirements and additional restrictions, such as limitations on relationships with licensees during and after service on the commission, limitations on ex parte communications, and prohibitions on gambling in the state.

As to pari-mutuel wagering, the bill provides:

- The commission may approve permits, if it finds doing so is in the best interests of the state.
- Inactive permits are subject to revocation.
- Uniform procedures for the relocation or conversion of permits, subject to approval by the commission.
- Reduced requirements for limited intertrack wagering licenses.
- The commission shall conduct studies of greyhound racing and the use of medications in horseracing.

As to slot machines, the bill:

- Requires the commission find that issuing a slot machine license is in the best interest of the state before approving licenses.
- Requires applicants for slot machine licensure to provide evidence that such licensure would not negatively impact state revenues, including those generated by tribal-state compacts.
- Provides approval process for slot machine licensure, contingent on a new compact with the Seminole Tribe that allows such gaming without the suspension of all revenue sharing.
- Contingent upon ratification of a Seminole Gaming Compact authorizing slot machines outside of Miami-Dade and Broward counties, the bill provides that the commission may consider slot licensure applications that meet specified criteria.

As to miscellaneous gaming, the bill:

- Specifically authorizes amusement games, including direct-prize games, in specified businesses.
- Authorizes the use of currency and stored-value cards.
- Requires operators awarding prizes register with the DGC, which is given authority to enforce.
- Directs the commission to review the prize limits and recommend changes to the Legislature.
- Specifically prohibits conducting game promotions or charitable drawings through slot machines or similar gaming devices
- Provides that any changes made by the bill are not intended to authorize new games.

The bill also consolidates all authorized gaming statutory provisions into ch. 551, F.S., and makes technical and clarifying changes throughout. The DGC's authority and duties are consolidated and generalized to all forms of gaming.

The bill is expected to have a fiscal impact on state funds; however a fiscal analysis is unavailable at this time.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Regulatory Oversight

Current situation

Gambling is generally prohibited in Florida, unless specifically authorized. Section 7, Art. X, of the Florida Constitution prohibits lotteries, other than pari-mutuel pools, from being conducted in Florida. Chapter 849, F.S., includes prohibitions against slot machines, keeping a gambling house and running a lottery.

Pari-mutuel wagering

Chapter 550, F.S., regulates the conduct of pari-mutuel wagering on horseracing, greyhound racing and jai alai and licensed pari-mutuel facilities. Section 849.086, F.S., authorizes cardrooms at such facilities and ch. 551, F.S., authorizes slot machines at such facilities, provided additional eligibility criteria are met. Such gaming is overseen by the Division of Pari-mutuel Wagering (DPMW) within the Department of Business and Professional Regulation (DBPR). Its purpose is to ensure the health, safety, and welfare of the public, racing animals, and licensees through efficient, and fair regulation of the pari-mutuel industry in Florida.

From 1932 to 1969, Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within the Department of Business Regulation, and, in 1993, the Department of Business Regulation became the DBPR.

The DPMW collects revenue in the form of taxes and fees from permitholders for the conduct of gaming activities outlined above. Additionally, the DPMW is the State Compliance Agency for oversight of the gaming compact with the Seminole Tribe. As part of the DPMW's oversight duties, it collects and verifies payments by the Seminole Tribe made to the State of Florida under the terms outlined in the Compact.

The DPMW currently makes an annual report to the Governor showing its actions, money received under Chapter 550, F. S., the practical effects of Chapter 550, and any suggestions for more effective accomplishment of the goals of the chapter.¹

Lottery

Section 15, Art. X, of the Florida Constitution authorizes state-operated lotteries. Chapter 24, F.S., implements this authorization. The Department of Lottery is designed to operate as a business, "so as to maximize revenues in a manner consistent with the dignity of the state and the welfare of its citizens."

Miscellaneous Gaming

Chapter 849, F.S., contains other specific exceptions to the general gambling prohibition and authorizes certain gambling activities, such as cardrooms at pari-mutuel facilities, bingo, penny-ante poker, arcade amusement games, amusement games and machines, and game promotions. Such gaming is primarily enforced by local law enforcement, although the Department of Agriculture and Consumer Services (DOACS) and the Department of Legal Affairs (DLA) has limited authority.

Indian Gaming

¹ Section 550.0251(1), F.S.
STORAGE NAME: h1383a.SCOG
DATE: 3/26/2014

Gambling on Indian lands is subject to federal law, with limited state involvement. Florida entered a compact governing such gambling with the Seminole Tribe of Florida in 2010 (Seminole Gaming Compact). Such gaming compacts are regulated by the federal Indian Gaming Regulatory Act, s, 25 U.S.C. 2701, et seq., and part II, ch. 285, F.S. The DPMW, as the State Compliance Agency under the Seminole Gaming Compact, has an oversight role in ensuring gaming at the Tribe's facilities is conducted in compliance with the compact.

The Seminole Gaming Compact 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. It also 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 Brighton or Big Cypress facilities. If these banked games are authorized for any other person for any other purpose, except by a compact with a qualifying Indian Tribe, the Tribe would be authorized to offer banked cards at all seven of its facilities.

The Seminole Gaming Compact has a term of 20 years, with the exception of the authorization for banked card games which lasts five years (until July 31, 2015), unless renewed by an affirmative act of the Legislature.

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, 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 three, \$233 million for year four, and \$234 million for year five.
- After the initial period, the Tribe pays the greater of the guaranteed minimum or payments based on a variable percentage of annual net win that ranges 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 five years, the Tribe will continue to make payments to the state based on the percentage of net win without a guaranteed minimum payment.

If the Legislature does not extend the authorization for banked card games after the first five years, the net win calculations would exclude the net win from the Tribe's facilities in Broward County.

Revenues are deposited in the General Revenue Fund.

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-mutuel facilities located in Miami-Dade and Broward counties (which may not relocate) and 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.

The Tribe would automatically be authorized to conduct the same games authorized for any other person at any location.

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 outside of Miami-Dade and Broward counties that was not authorized for such games before February 1, 2010; and
- The new gaming begins to be offered for private or public use.

Executive departments limited

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. The Executive Office of the Governor may also be considered the functional equivalent of a department. In summary, there appears to be 22 state entities that are executive departments.

Proposed changes

Effective July 1, 2014, the bill would create a new Department of Gaming Control (DGC), headed by a Gaming Control Commission (commission), to oversee all legal gaming in the state.

The bill provides the following reorganization process:

- The Governor appoints members to the commission, from nominees provided by the Joint Legislative Gaming Control Nominating Committee.
- Effective July 1, 2014, the commission appoints an executive director of the DGC. If it fails to do so by August 1, 2014, the Governor appoints an interim executive director.
 - The executive director serves as secretary to the commission and as the primary liaison with all entities involved in the reorganization.
- The commission establishes a detailed procedure for the implementation of this act.
- The DBPR shall work with the commission and its executive director to achieve full implementation of the bill.
- The oversight of gaming is transferred to the new department by type II transfers, effective October 1.

Joint Legislative Gaming Control Nominating Committee

Effective upon becoming law, the bill creates a joint legislative committee to nominate up to three people per vacancy on the commission. The joint committee is composed of six members: three members of the Senate, appointed by the Senate President, and three members of the House of Representatives, appointed by the House Speaker. The House Speaker and the Senate President alternate appointing chair and vice chairs. The joint committee is governed by the joint rules of the Senate and House of Representatives.

Gaming Control Commission

The bill provides that the commission serves as the agency head of the newly created DGC. The bill also designates the commission as the state compliance agency under the Seminole Gaming Compact. Generally, the bill vests the commission with the following authority:

- May, within restrictions, approve applications for permits and licenses for pari-mutuel wagering, cardrooms and slot machines, if it finds doing so is in the state's best interests.
- May, within restrictions, approve applications to move a permitted facility or to change the type of authorized pari-mutuel wagering, for example from jai alai to greyhound racing.

The commission is composed of five members, appointed by the Governor from a list provided by the Joint Legislative Gaming Control Nominating Committee. Appointments are subject to Senate confirmation. If the Senate refuses to confirm or fails to consider the appointment at the next regular legislative session, the nominating committee initiates the nominating process within 30 days.

Of the five members, one must be an attorney, and one must be a certified public accountant. The remaining members must be knowledgeable in economics, economic development, public health, technology, tourism or another field substantially related to the duties and functions of the commission. Officers of political parties and persons convicted of felonies or persons recently convicted of misdemeanors involving gambling may not be nominated.

In addition to the ethics requirements under ch. 112, F.S., the bill provides the following ethics requirements and restrictions:

- Commissioners and employees and relatives living in the same household cannot have a financial interest in applicants or licensees or lobby the commission for 2 years after service or employment.
- Ex parte communications between commissioners and interested parties are prohibited. Enforced with a \$5,000 civil penalty.
- Commissioners and employees cannot accept gifts or comps from licensees or applicants.
- Commissioners cannot lobby state or local government, except on behalf of commission and DGC.
- Commissioners and employees cannot gamble at licensed facilities or Indian Tribe operated gaming facilities in the state.

Department of Gaming Control

The bill creates DGC as a new executive branch agency. The commission serves as the agency head and may organize the DGC into up to five divisions. The commission appoints an executive director to oversee the DGC and an inspector general. The Governor may appoint an interim executive director whenever necessary. The bill specifies certain senior management positions in the DGC are exempt from career service.

The bill provides that, effective October 1, 2014, the DGC will be responsible for implementation, administration and enforcement of authorized gaming (chapter 551) and illegal gambling (chapter 849).

Effective October 1, 2014, the bill transfers by type two transfer the Division of Pari-mutuel Wagering from DBPR and the game promotions registration program from DOACS to the newly created DGC. The bill also transfers the Pari-mutuel Wagering Trust Fund and renames it the Gaming Control Trust Fund.

The bill consolidates powers and duties provisions, including rulemaking authority, to remove inconsistencies and avoid gaps in DGC authority. Likewise, the bill consolidates and generalizes reporting requirements for licensees.

The bill expands the annual report of the DPMW to specifically require delivery to Legislature and an accounting, broken down by industry of revenues and expenses.

The bill makes a number of technical and clarifying changes to chapters 550, F.S., related to pari-mutuel wagering; 551, F.S., relating to slot machines; and 849, F.S., relating to gambling. All authorizations for gambling are consolidated into chapter 551, F.S., which is renamed Florida Gaming Control Act.

The bill reorganizes chapter 551, F.S., as follows:

- | | |
|----------|---------------------------------------|
| Part I | Florida Gaming Control |
| Part II | Pari-mutuel Wagering |
| Part III | Slot Machines |
| Part IV | Cardrooms |
| Part V | Occupational Employees and Associates |
| Part VI | Miscellaneous Gaming |

Current powers and duties of the DPMW from chapters 550, 551 and 849, F.S., and powers and duties of the DOACS from chapter 849, F.S., are transferred to the DGC and consolidated into a newly created s. 551.0013, F.S. The bill also designates the commission as the state compliance agency under the Seminole Gaming Compact.

Pari-mutuel Wagering

Current situation

'Pari-mutuel wagering' refers to a method of wagering in which winners divide the total amount bet in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes.² In Florida, pari-mutuel wagering is authorized on jai alai, greyhound racing and various forms of horseracing and overseen by the DPMW. Chapter 550, F.S., provides specific licensing requirements, taxation provisions, and regulations for the conduct of the industry.

Pari-mutuel wagering activities are limited to operators who have received a permit from the DPMW, which is then subject to ratification by county referendum. Permitholders apply for licenses annually to conduct pari-mutuel wagering activities,³ cardrooms,⁴ and slot machines.⁵

Horse racing was authorized in the State of Florida in 1931. The state authorizes three forms of horse racing classes for betting: thoroughbred, harness, and quarter horse racing. Thoroughbred racing involves only horses specially bred and registered by certain bloodlines. The thoroughbred industry is highly regulated and specifically overseen by national and international governing bodies. Harness racing uses standard bred horses, which are a "pacing or trotting horse...that has been registered as a standardbred by the United States Trotting Association" or by a foreign registry whose stud book is recognized by the USTA.⁶ Quarter horse racing involves horses developed in the western United States which are capable of high speed for a short distance.⁷ They are registered with the American Quarter Horse Association.

The DPMW approves pari-mutuel wagering permits. Generally, as long as the applicant meets statutory minimum requirements, the DPMW issues the permit. There is no application fee. While the DPMW is authorized to charge applicants for its investigation, it has not done so in recent years. It determines eligibility using existing resources.

The DPMW has issued 50 pari-mutuel wagering permits, and 5 non-wagering permits. There are 35 pari-mutuel permitholders currently operating at 29 facilities throughout Florida. Currently, 24 pari-mutuel facilities are operating cardrooms. There are seven pari-mutuel facilities that have been licensed to operate slot machines. Several locations have multiple permits that operate at a single facility. The breakdown by permit type is as follows:

- 16 Greyhound permits
- 3 Thoroughbred permits
- 1 Harness permit
- 2 Quarter Horse permits
- 6 Jai-Alai permits
- 1 track offering limited intertrack wagering and horse sales

Permit revocation

Under certain circumstances in statute, a permitholder may lose his or her permit to conduct pari-mutuel wagering. If a permitholder has failed to complete construction of at least 50 percent of the facilities necessary to conduct pari-mutuel wagering within 12 months after approval by the voters of the permit, the division shall revoke the permit after giving adequate notice to the permitholder.⁸ The DPMW may grant one extension of 12 months upon a showing of good cause by the permitholder.

² Section 550.002(22), F.S.

³ Section 550.0115, F.S.

⁴ Section 849.086, F.S.

⁵ Section 551.104, F.S.

⁶ Section 550.002(33), F.S.

⁷ Section 550.002(28), F.S.

⁸ Section 550.054(10), F.S.

If a permitholder fails to pay tax on handle for live thoroughbred horse performances for a full schedule of live races for two consecutive years, his or her permit is void and escheats back to the state, unless the failure of payment was due to events beyond the control of the permitholder.⁹ Financial hardship to the permitholder does not, in and of itself, constitute just cause for the failure to pay taxes in this section. There is a similar requirement for harness racing permitholders in s. 550.9512(3)(a), F.S. In the case of failure to pay taxes, the permit escheats to the state and may be reissued.

Relocation

Certain permitholders may relocate the location listed in their permit to a new location within 30 miles. Greyhound and jai alai permitholders operating in counties where they are the only permitholder of that class may relocate under s. 550.0555, F.S. Greyhound permitholders that converted their permit from a jai alai permit under s. 550.054, F.S., may relocate under that statute. A greyhound permitholder in a county where it is the only permitholder who operates at a leased facility may also relocate under s. 550.054, F.S.

In each of these cases, the relocation must not cross county boundaries and must be approved under the local zoning regulations. In relocation under s. 550.054, F.S., the DPMW is required to grant the application for relocation once the permitholder fulfills the requirements of the statute. Approval by the DPMW is required for relocations under s. 550.0555, F.S.

Conversion

Certain permitholders may convert their permits, for instance, a permit for pari-mutuel wagering on jai alai may be converted to greyhound racing if the permitholder meets certain criteria.¹⁰ In the past, quarter horse permits have been converted to limited thoroughbred permits,¹¹ jai alai to greyhound racing,¹² etc.

Permitholders may also convert to conduct summer jai alai, in certain circumstances.¹³ This provision, enacted in 1980, has been subject to competing interpretations. The bill enacting the provision included in a whereas clause a finding that "it would be to the best interests of the state to permit summer jai alai so long as there is no increase in the number of permittees authorized to operate within any specified county." The DPMW issued one summer jai alai permit in Miami-Dade County in 2011 and has received numerous applications for Miami-Dade and Broward counties. The provision in question reads:

If a permitholder that is eligible under this section to convert a permit chooses not to convert, a new permit is made available in that permitholder's county to conduct summer jai alai games as provided by this section, notwithstanding mileage and permit ratification requirements. If a permitholder converts a quarter horse racing permit pursuant to this section, this section does not prohibit the permitholder from obtaining another quarter horse racing permit.

If the provision is interpreted to provide for the issuance of a new permit, it could be used to issue new permits as often as every two years.

Intertrack wagering

Wagering on races hosted at remote tracks is called intertrack (when both tracks are in Florida) or simulcast (when one track is out of state) wagering. In-state 'host tracks' conduct live or receive broadcasts of simulcast races that are then broadcast to 'guest tracks,' which accept wagers on behalf

⁹ Section 550.09515(3)(a), F.S.

¹⁰ Section 550.054(14), F.S., ruled an unconstitutional act by *Debary Real Estate Holdings, LLC v. State, Dept. of Business and Professional Regulation, Div. of Pari-Mutuel Wagering*, 112 So.3d 157, 168 (1st DCA 2013).

¹¹ See s. 550.3345, F.S.

¹² Chapter 89-219, L.O.F.

¹³ Section 550.0745, F.S.

of the host. To conduct intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing and meet other requirements.¹⁴

A limited amount of intertrack wagering is also authorized by statute for one permanent thoroughbred sales facility.¹⁵ In order to qualify for a license, the facility must have at least 15 days of thoroughbred horse sales at a permanent sales facility in this state for at least three consecutive years. Additionally, the facility must have conducted at least 1 day of nonwagering thoroughbred racing in this state, with a purse structure of at least \$250,000 per year for 2 consecutive years before application for a license.

A limited intertrack wagering licensee is limited to conducting intertrack wagering during:

- The 21 days in connection with thoroughbred sales;
- Between November 1 and May 8;
- Between May 9 and October 31, if:
 - No permitholder within the county is conducting live events.
 - Permitholders operating live events within the county consent.
 - For the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet.

The licensee is further limited to intertrack wagering on thoroughbred racing, unless all permitholders in the same county consent. The licensee must pay 2.5 percent of total wagers on jai alai or greyhound racing to thoroughbred permitholders operating live races for purses.

Cardrooms

Cardrooms were authorized at pari-mutuel facilities in 1996.¹⁶ Cardrooms can only be offered at a location where the permitholder is authorized to conduct pari-mutuel activities. To be eligible for a cardroom license, permitholders must conduct at least 90% of the performances conducted the year they applied for the initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances.

The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. No-limit poker games are permitted. Such games are played in a non-banking matter, i.e., the house has no stake in the outcome of the game. Cardrooms 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.

Proposed changes

Horseracing definitions

The bill provides definitions of "horserace," "harness race," "quarter horse race," and "thoroughbred race":

- Horserace is defined as a head-to-head contest before two or more horses racing with each other in the same event on a flat track with banked turns and a connecting straight chute at least 440 yards in length without obstacles. Steeplechases, hurdle races, barrel racing, timed events, pole bending and other rodeo or gymkhana events are specifically excluded.
- Harness race is further defined to be limited to standardbred horses guided by state and U.S. Trotting Association-licensed standardbred drivers pulling two-wheeled carts and dispatched from a regulation barrier. Monte racing, in which the driver competes while astride the horse, is specially included.
- Quarter horse race is further defined to be limited to quarter horses registered with the American Quarter Horse Association, racing at distances and under conditions that qualify for race recognition pursuant to the Official Handbook of Rules and Regulations of the American

¹⁴ See s. 550.615, F.S.

¹⁵ Section 550.6308, F.S.

¹⁶ Section 20, Chapter 96-364, L.O.F.

Quarter Horse Association, in effect on January 1, 2014, dispatched from a regulation gate and mounted by state-licensed jockeys.

- Thoroughbred race is further defined to be limited to thoroughbred horses racing on a track at least seven furlongs in circumference, dispatched from a regulation starting gate and mounted by state-licensed jockeys.

Jai Alai

The bill provides minimum qualifications for jai alai players and minimum roster size for jai alai permitholders:

- Every jai alai player participating in games at a licensee's jai alai facility must be certified as an eligible professional player by the International Jai Alai Players Association or any other players association that was recognized by the national Labor Relations Board before 1990.
- A jai alai permitholder that does not operate slot machines in its pari-mutuel facility must maintain a minimum active roster of at least 16 different professional players.
- A jai alai permitholder that does operate slot machines in its pari-mutuel facility must maintain a minimum active roster of at least 36 different professional players.

Permit application process

The bill provides that the commission may approve permits for pari-mutuel wagering, if it determines doing so is in the state's best interest. The bill requires the commission consider, in addition to the applicant's qualifications, the overall impact to state revenues, including those generated under tribal-state gaming compacts.

The bill provides that, effective upon becoming law, the DPMW may not approve or issue any new permit authorizing pari-mutuel wagering.

Permit revocation

The bill provides three scenarios under which the commission shall revoke a permit:

- If at least 50 percent of the facilities necessary to conduct pari-mutuel operations are not constructed within 12 months after receipt of a pari-mutuel permit if ratification by local referendum was not required. The commission may grant one extension of 12 months upon a showing of good cause by the permitholder. This extends the existing requirement measuring from the date of approval by referendum.
- If a permitholder has failed to conduct live events for a period of 12 consecutive months. The commission may grant one extension of 12 months upon a showing of good cause by the permitholder.
- If a permitholder fails to pay taxes on a full schedule of live events for two consecutive years. This extends the existing requirement relative to thoroughbred and harness racing permits to all pari-mutuel wagering permits.

Also, effective upon becoming law, the bill directs the DPMW to revoke any for-profit permits that were issued before January 1, 2012, under which no pari-mutuel wagering has been conducted since that date.

The bill specifies that permits revoked under these situations are void and may not be reissued.

The commission is authorized to approve a request to place a permit in inactive status for up to 2 years. While in inactive status, the permitholder is ineligible for licensure for pari-mutuel wagering, cardrooms or slot machines.

Relocation

The bill repeals all relocation provisions and replaces them with a uniform process that gives the commission discretion to approve requests to relocate permits within a county, or to a contiguous

county that has ratified a pari-mutuel wagering permit previously, if it finds doing so is in the state's best interest. In order to be eligible, the applicant has the burden of proving:

- The proposal does not negatively impact state revenues, including those generated by tribal-state compacts.
- Pari-mutuel wagering at the proposed location is approved under the zoning and land use regulations of the applicable county or municipality.

The bill requires the commission consider any impact to state resources, the local community, the industry and other pari-mutuel wagering licensees.

The bill provides that, if the commission approves the relocation, it shall issue a revised permit stating the new location. The bill specifies that no pari-mutuel wagering or other gaming may be conducted at the new location unless the permitholder receives a license for such wagering or gaming at the new location pursuant to ch. 551.

Conversion

The bill repeals all conversion provisions and replaces them with a uniform process that gives the commission discretion to approve conversion requests if it finds doing so is in the state's best interest. In order to be eligible, the applicant has the burden of proving:

- The proposal does not negatively impact state revenues, including those generated by tribal-state compacts.
- The proposed activity is approved under the zoning and land use regulations of the applicable county or municipality.

The bill requires the commission consider any impact to state resources, the local community, the industry and other pari-mutuel wagering licensees.

The bill provides that, if the commission approves the conversion, it shall issue a revised permit stating the new type of pari-mutuel activity. The bill specifies that no pari-mutuel wagering or other gaming may be conducted at the new location unless the permitholder receives a license for such wagering or gaming at the new location pursuant to ch. 551.

The bill repeals language authorizing a permitholder, other than the permitholder with the lowest pari-mutuel pool, to convert to conduct summer jai alai.

Intertrack wagering

The bill reduces requirements for limited intertrack wagering licensure:

- The number of days for public sales of thoroughbred horses is reduced from 15 to 8.
- The requirement to conduct at least one day of nonwagering racing is removed.
- The restrictions on when such intertrack wagering may occur are removed.
- The requirement to obtain consent of other county permitholders to accept intertrack wagers on non-thoroughbred events is removed.

The bill also removes the requirement to pay purse contributions to thoroughbred permitholders operating live events.

Greyhound racing

The bill directs the commission to conduct a study of greyhound racing, including the current tax and purse structures and safety, and to provide a report of its findings and recommendations to the Governor and Legislature by December 1, 2015.

The bill directs the commission to conduct a study of the usage of medication in horseracing and to provide a report of its findings and recommendations to the Governor and Legislature by December 1, 2015.

Slot machines

Current situation

Racinos, pari-mutuel facilities that operate slot machine gaming, are governed by ch. 551, F.S. Eligible facilities are defined to include:

1. Any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county;
2. Any licensed pari-mutuel facility located within a county as defined in s. 125.011, provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter; or
3. Any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required licensed fee, and meets the other requirements of this chapter.

Eight pari-mutuel facilities obtained eligibility through constitutional approval - the first clause. An additional pari-mutuel facility, Hialeah Park, was ineligible as it had not operated live racing or games during 2002 and 2003. It obtained eligibility through the second clause.

No facilities have obtained eligibility through the third clause; however, it has been subject to competing interpretations. Stakeholders and counties have argued that the phrase "after the effective date of this section" applies to "a countywide referendum held" - so any county could authorize slot machines relying on their general authority to hold referenda. Based on this interpretation, Brevard, Gadsden, Lee, Palm Beach, and Washington counties, have approved slot machines at pari-mutuel facilities by referendum.

Were such gaming to occur outside of Miami-Dade or Broward counties, all revenue sharing under the Seminole Gaming Compact would end. The Seminole Gaming Compact was ratified in the same law that effectuated the third clause.

The Attorney General rejected this interpretation, arguing that the phrase "after the effective date of this section" modified the phrase "a statutory or constitutional authorization"¹⁷ - so, counties could not rely on their general authority to hold referenda, instead needing a specific authorization to hold a referendum on the question of slot machines. The DPMW announced that it would follow this guidance.¹⁸

Slot machine licensees are required to pay a license fee of \$2 million per fiscal year. In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent. If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee must pay to the state, within 45 days

¹⁷ AGO 2012-01.

¹⁸ Mary Ellen Klas, Attorney general opinion puts reins on slots at Gretna barrel racing track, Miami Herald (Jan. 12, 2012), *available online at* <http://www.miamiherald.typepad.com/nakedpolitics/2012/01/attorney-general-opinion-puts-reins-on-gretna-barrel-racing-.html>.

after the end of the state fiscal year, a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year that resulted in the revenue shortfall.

To continue to offer slot machines, permitholders must conduct a full schedule of live racing.¹⁹ Additionally, thoroughbred permitholders must file an agreement between the track and the Florida Horsemen's Benevolent and Protective Association governing payment of purses on live thoroughbred races at the licensee's facility with the Division, as well as an agreement with the Florida Thoroughbred Breeders' Association on the payment of breeders', stallion, and special racing awards on those races.²⁰ Similarly, quarter horse permitholders must file an agreement with the Division between the track and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the licensee's facility governing the payment of purses on live quarter horse races at the licensee's facility.²¹

Proposed changes

The bill gives the commission discretion to approve or deny applications for slot licensure if the applicant meets certain criteria and the commission finds it is in the state's best interest to issue the license.

In order to be eligible, the applicant has the burden of proving, by clear and convincing evidence, that:

1. The facility at which the applicant seeks to operate slot machines is:
 - a. A licensed pari-mutuel facility authorized for slot machine licensure pursuant to s. 23, Art. X of the State Constitution, or
 - b. A licensed pari-mutuel facility located in a county as defined by s. 125.011, F.S.,²² which has conducted live horseracing for 2 consecutive fiscal years immediately preceding its application.
2. Issuance of the license would not negatively impact state revenues, including those generated by tribal-state compacts.
3. Slot machine gaming at the proposed location is approved under the zoning and land use regulations of the applicable county or municipality.

Contingent upon the approval and ratification of a Seminole Gaming Compact that authorizes slot machines outside of Miami-Dade and Broward counties, the bill provides that the commission may also consider applications for slot machine licensure, if the applicant:

- Conducted at least 250 live performances for each of the 10 consecutive calendar years immediately preceding its application for a slots license;
- The county in which the applicant seeks licensure has approved slot machines at pari-mutuel facilities by a countywide referendum held concurrently with a general election for the offices of President and Vice-President of the United States; and
- The applicant present to the commission for revocation all permits for pari-mutuel wagering that it directly or indirectly is the majority owner of, except for the permit which slot machine licensure is sought.

Such applicants, if specifically contemplated by the Seminole Gaming Compact, would be exempt from proving issuance would not negatively impact state revenues. The bill provides that this section shall only take effect if the Governor and Seminole Tribe execute an amended compact and only if that compact provides for the operation of slot machines at state-licensed facilities outside of Miami-Dade and Broward counties without the suspension of all revenue sharing payments. This section would take effect upon publication of such a compact in the Federal Register.

¹⁹ Section 551.104(1)(c), F.S.

²⁰ Section 551.104(10)(a)1, F.S.

²¹ Section 551.104(10)(a)2, F.S.

²² Currently, only Miami-Dade County meets this definition.

The bill provides that, effective upon becoming law, the DPMW may not approve or issue any new license authorizing slot machines.

Miscellaneous gaming

Current situation

Game Promotions

Businesses use game promotions as a marketing tool to promote their goods or services. While Florida law generally prohibits gambling and lotteries,²³ game promotions have been regulated by statute since 1971.²⁴ Before this time, the games were considered illegal lotteries.²⁵

'Game promotion' is defined by statute as a contest, game of chance, or gift enterprise, conducted within or throughout the state and other states in connection with, and incidental to, the sale of consumer products or services, and in which the elements of chance and prize are present.

Section 849.09, F.S., provides an exemption from the lottery prohibition for participation in nationally advertised contests, drawings or puzzles for prizes, unless they can be construed as a lottery under the section.

Section 849.092, F.S., provides an exemption from the lottery prohibition for game promotions conducted by businesses licensed as motor fuel retailers. It places the following limitations on the games:

- (1) Such gifts are conducted as advertising and promotional undertakings, in good faith, solely for the purpose of advertising the goods, wares, merchandise and business of such licensee; and
- (2) The principal business of such licensee is the business permitted to be licensed under s. 206.404; and
- (3) No person to be eligible to receive such gift shall ever be required to:
 - (a) Pay any tangible consideration to such licensee in the form of money or other property or thing of value, or
 - (b) Purchase any goods, wares, merchandise or anything of value from such licensee.

In 1977, a reviser's bill removed a statutory cross reference from s. 849.092, F.S., to businesses licensed as retail stores, because the specific statute referenced had been repealed by a 1972 rewrite of chapter 205, now relating to local business taxes.²⁶ In 1973, the attorney general opined that operators who met the previously cross-referenced definitions were eligible to conduct game promotions, despite the rewrite of chapter 205.²⁷

Section 849.094, F.S., prohibits game promotions from requiring entry fees or proof of purchase to play, having predetermined winners, arbitrarily disqualifying entries, failing to award prizes, and advertising falsely. It contains no explicit exemption from the statutory prohibition on lotteries in s. 849.09, F.S., or any other statutory gambling prohibition.

If the total value of prizes offered in the game promotion exceeds \$5,000, the operator must:

- File with DACS a copy of the game rules and prizes seven days before the promotion begins.
- Establish a trust account equal to the total retail value of the prizes.
- File a list of winners of prizes exceeding \$25 within 60 days.

²³ See ss. 849.08 (gambling) and 849.09, F.S. (lotteries).

²⁴ Sections 1-9, ch. 71-304, L.O.F.; Section 849.094, F.S.

²⁵ *Little River Theatre Corp. v. State ex rel. Hodge*, 135 Fla. 854 (1939).

²⁶ 1977 HB 1572, s. 244; ch. 77-104, F.S., struck cross reference to s. 205.482, F.S., which was repealed by 1972 HB 4465; ch. 72-306, L.O.F.

²⁷ Fla. AGO 73-12.

Violations of the statute are punishable as second-degree misdemeanors. Persons violating the statute may also be liable for civil fines.

Arcades

Under s. 849.16, F.S., arcade games may be slot machines if they include any element of chance, regardless of whether they also involve skill.²⁸ Section 849.161, F.S., provides a limited exemption for certain coin-operated games operated by an application of skill at specified locations.

Redemption games operate by an application of skill and may award players points or coupons that are exchangeable for merchandise. The statute specifically excludes video poker and games defined as gambling device under the federal Johnson Act.

The games are only permitted in arcade amusement centers having at least 50 games and truck stops having at least 6 diesel fuel pumps.

Prizes are limited to merchandise only, the cost value of which may not exceed 75 cents on any game played.

The DBPR notifies the Department of Revenue of any DBPR-licensed public lodging establishment or public food service facility that is operating amusement games without the requisite tax certificate.

Proposed changes

The bill authorizes the DGC and commission to take all appropriate action to enforce the law regulating authorized gaming. The bill provides that changes to the provisions in this part (previously authorizations in ch. 849) are not intended to authorize additional games but to clarify current limitations under which authorized games may be operated.

Game Promotions

The bill consolidates ss. 849.092 and 849.094, F.S., into one statute, s. 551.50, F.S., which authorizes game promotions and requires registration with the Division of Amusements within the newly created department. The bill specifically authorizes game promotions for any person as long as:

- The game promotion is conducted as a temporary advertising undertaking, in good faith, solely for the purposes of advertising the goods or services of an ongoing business.
- The principal business of the person is the sale of consumer goods or services, which are primarily offered for sale without the use of game promotions.
- To receive a prize, a person is not required to pay any tangible consideration or purchase anything.
- The person selected to win any prize is notified.
- All advertisements state that residents of the state are entitled to participate.

The bill specifies that it is unlawful to conduct game promotions or charitable drawings using slot machines or other similar gaming devices.

Arcades

The bill provides that amusement games are those operated only for the bona fide entertainment of the general public. It allows such games to be operated with currency or gift certificates, which is defined to include stored-value cards.²⁹

²⁸ Compare *Weathers v. Williams*, 133 Fla. 367 (1938)(mechanical horse race games and pinball games are slot machines); *Hernandez v. Graves*, 148 Fla. 247 (1941)(trivia game is slot machine); *Deeb v. Stoutamire*, 53 So.2d 873 (Fla. 1951)(bowling game not slot machine).

²⁹ The bill references s. 501.95, F.S., which defines "gift certificate" as "a certificate, gift card, stored value card, or similar instrument purchased for monetary consideration when the certificate, card, or similar instrument is redeemable for merchandise, food, or

The bill authorizes redemption games at bowling centers, public lodging establishments and public food service facilities.

The bill specifies that direct-prize games (i.e. crane games) are authorized at arcades, truck stops, bowling centers, public lodging establishments, public food service facilities or retailers. Such prizes are limited to \$50 in wholesale cost.

The bill requires game operators register with the Division of Amusements within the DGC annually in order to offer prizes. Such registration includes disclosures of the operator's name and address, the location of each center, the number of machines operated at each center, the type and title of each game and the type and value of merchandise available as prizes. The bill provides that the DGC may collect up to \$100 registration fee.

The bill directs the commission to review the per-game prize values and report to the Legislature the sufficiency of such prizes and any recommended changes.

The bill specifically authorizes DGC to enter and inspect such facilities and to take all appropriate action to administer and enforce the section.

The bill directs DBPR to notify the DGC of the name and address of any DBPR-licensed public lodging establishment or public food service facility that is operating amusement games without a certificate of registration with the DGC.

Excepted as noted otherwise, the majority of the bill is effective October 1, 2014.

B. SECTION DIRECTORY:

Section 1 Creates s. 11.93, F.S., creating the Joint Legislative Gaming Control Nominating Committee.

Section 2 Amends s. 20.165, F.S., removing a provision that establishes the Division of Pari-Mutuel Wagering in the Department of Business and Professional Regulation.

Section 3 Creates s. 20.222, F.S., creating the Department of Gaming Control.

Section 4 Amends s. 110.205, F.S., relating to the career service exemptions.

Section 5 Amends s. 120.80, F.S., transferring provisions relating to exemptions to the hearing and notice requirements for the DPMW to the DGC.

Section 6 Amends s. 285.710, F.S., relating to the Gaming Compact between the Seminole Tribe of Florida and the State of Florida; specifying the commission as the state compliance agency.

Section 7 Amends s. 285.712, F.S., correcting a reference.

Section 8 Transfers the DPMW of the DBPR, the Pari-mutuel Wagering Trust Fund within the DBPR and the specified responsibilities and functions relating to game promotions within the DOACS to the DGC by type two transfer.

Section 9 Repeals ss. 550.001-550.71, F.S., relating to pari-mutuel wagering.

Section 10 Redesignates ch. 551, F.S., as the "Florida Gaming Control Act".

Section 11 Creates part I of ch. 551, F.S., entitled "Florida Gaming Control".

Section 12 Creates s. 551.001, F.S., defining terms relative to the commission.

Section 13 Creates s. 551.0011, F.S., creating the Gaming Control Commission.

Section 14 Creates s. 551.0012, F.S., providing powers and duties of the commission.

- Sections 15 Transfers, renumbers and amends ss. 550.0251 and 551.103, F.S., as s. 551.0013, F.S., providing powers and duties.
- Section 16 Creates s. 551.0014, F.S., requiring the department to adopt a code of ethics; providing ethical requirements.
- Section 17 Creates s. 551.0016, F.S., relating to ex parte communication.
- Section 18 Creates s. 551.0017, F.S., providing penalties for misconduct by a member, employee, or agent of the Gaming Control Commission.
- Section 19 Creates part II of ch. 551, F.S., entitled "Pari-mutuel Wagering";
- Section 20 Creates s. 551.011, F.S., providing a short title.
- Section 21 Creates s. 551.012, F.S., amending current s. 550.002, relating to definitions for pari-mutuel wagering.
- Section 22 Creates s. 551.013, F.S., making technical changes to current s. 550.155, F.S., authorizing pari-mutuel wagering.
- Section 23 Creates s. 551.018, F.S., making technical changes to current s. 550.105, F.S., relating to local government taxes.
- Section 24 Creates s. 551.021, F.S., amending current s. 550.054, F.S., relating to applications for permit to conduct pari-mutuel wagering.
- Section 25 Creates s. 551.0221, F.S., making technical changes to current s. 550.0651, F.S., relating to elections for ratification of permits.
- Section 26 Creates s. 551.0222, F.S., making technical changes to current s. 550.175, F.S., relating to petition for election to revoke permit.
- Section 27 Creates s. 551.0241, F.S., relating to relocation of permits.
- Section 28 Creates s. 551.0251, F.S., amending current s. 550.3345, F.S., relating to limited thoroughbred racing permits.
- Section 29 Creates s. 551.0252, F.S., relating to conversion of permits.
- Section 30 Creates s. 551.0253, F.S., amending current s. 550.0745, F.S., relating to summer jai alai.
- Section 31 Creates s. 551.026, F.S., amending current s. 550.505, F.S., relating to nonwagering licenses.
- Section 32 Creates s. 551.029, F.S., making technical changes to current s. 550.1815, F.S., relating to persons prohibited from holding permits and suspension and revocation.
- Section 33 Creates s. 551.0321, F.S., making technical changes to current ss. 550.0115 and 550.125, F.S., provisions relating to pari-mutuel licenses and bonds.
- Section 34 Creates s. 551.0322, F.S., amending current s. 550.01215, F.S., relating to license applications.
- Section 35 Creates s.551.033, F.S., making technical changes to current s. 550.0951, F.S., provisions relating to payment of daily license fees and taxes; penalties.
- Section 36 Creates s. 551.034, F.S., making technical changes to current s. 550.125, F.S., relating uniform reporting system.
- Section 37 Creates s. 551.035, F.S., making technical changes to current s. 550.135, F.S., relating to distribution of moneys.
- Section 38 Creates s. 551.036, F.S., making technical changes to current s. 550.1645, F.S., relating to escheat to state of abandoned interest in or contribution to pari-mutuel pools.
- Section 39 Creates s. 551.037, F.S., making technical changes to current s. 550.475, F.S., relating to lease of pari-mutuel facilities.

- Section 40 Creates s. 551.038, F.S., making technical changes to current s. 550.155, F.S., relating to proposed capital improvement.
- Section 41 Creates s. 551.039, F.S., amending current ss. 550.039, F.S., relating to charity scholarship days and derbies.
- Section 42 Creates s. 551.042, F.S., making technical changes to current s. 550.002, 550.09514. F.S., relating to greyhound racing; purse requirements.
- Section 43 Creates s. 551.043, F.S. making technical changes to current ss. 550.0951 and 550.1647, F.S., relating to greyhound racing taxes and fees.
- Section 44 Creates s. 551.045, F.S., making technical changes to current s. 550.1648, F.S., relating to greyhound adoptions.
- Section 45 Creates s. 551.0511, F.S., making technical changes to current s. 550.2625, F.S., provisions relating to horseracing; purse requirement; breeder and owner awards.
- Section 46 Creates s. 551.0512, F.S., making technical changes to current s. 550.26165, F.S., relating to breeder awards.
- Section 47 Creates s. 551.0521, F.S., making technical changes to current s. 550.002 and 550.5251, F.S., provisions relating to thoroughbred racing; operations.
- Section 48 Creates s. 551.0523, F.S., making technical changes to current s. 550.2625, F.S., relating to thoroughbred racing; purses and rewards.
- Section 49 Creates s. 551.0524, F.S., making technical changes to current s. 550.26352, F.S., relating to Breeders' Cup Meet.
- Section 50 Creates s. 551.053, F.S., making technical changes to current s. 550.0951, F.S., relating to thoroughbred racing taxes and fees.
- Section 51 Creates s. 551.0541, F.S., making technical changes to current s. 550.002 and 550.375, F.S., relating to harness racing.
- Section 52 Creates s. 551.0542, F.S., making technical changes to current s. 550.2625, F.S., relating to harness races purses and awards.
- Section 53 Creates s. 551.0543, F.S., making technical changes to current ss. 550.0951, 550.09512, and 550.2633, F.S., relating to harness racing taxes and fees.
- Section 54 Creates s. 551.0551, F.S., making technical changes to current ss. 550.002 and 550.334, F.S., relating to quarter horse racing operations.
- Section 55 Creates s. 551.0552, F.S., making technical changes to current s. 550.2625, F.S., relating to quarter horse races purses and awards.
- Section 56 Creates s. 551.0553, F.S., making technical changes to current s. 550.0951, F.S., relating to quarter horse racing taxes and fees.
- Section 57 Creates s. 551.056, F.S., making technical changes to current s. 550.2625, F.S., relating to appaloosa horse races; Arabian horse races; purse requirements.
- Section 58 Creates s. 551.062, F.S., making technical changes to current ss. 550.002 and 550.70, F.S., provisions relating to Jai alai.
- Section 59 Creates s. 551.0622, F.S., making technical changes to current s. 550.2704, F.S., relating to Jai Alai Tournament of Champions Meet.
- Section 60 Creates s. 551.063, F.S., making technical changes to current ss. 550.0951, 550.09511, 550.1646 and 550.2704, F.S., relating to jai alai taxes and fees.
- Section 61 Creates s. 551.072, F.S., making technical changes to current s. 550.3551, F.S., relating to transmission of racing and jai alai information; commingling of pari-mutuel pools.
- Section 62 Creates s. 551.073, F.S., making technical changes to current s. 550.615, F.S., relating to intertrack wagering.

- Section 63 Creates. 551.074, F.S., making technical changes to current s. 550.625, F.S., relating to purses and breeders awards when the host facility for intertrack wagering is a horse track.
- Section 64 Creates s. 551.075, F.S., making technical changes to current s. 550.6305, F.S., relating to guest facility payments and accounting rules for intertrack wagering.
- Section 65 Creates s. 551.076, F.S., making technical changes to current s. 550.6335 and 550.6345, F.S., relating to surcharge; supplement payments.
- Section 66 Creates s. 551.077, F.S., amends current s. 550.6308, F.S., relating to limited intertrack wagering license.
- Section 67 Creates s. 551.078, F.S., making technical changes to current s. 550.495, F.S., relating to totalisator licensing.
- Section 68 Creates s. 551.082, F.S., making technical changes to current s. 550.0425, F.S., relating to minors attendance at pari-mutuel performances; restrictions.
- Section 69 Creates s. 551.0921, F.S., making technical changes to current s. 550.24055, F.S., relating to use of controlled substances or alcohol prohibited; testing of certain occupational licenses.
- Section 70 Creates s. 551.0922, F.S., making technical changes to current s. 550.1155, F.S., relating to authority of stewards, judges, panel of judges, or player's manager to impose penalties against occupational licensees; disposition of funds collected.
- Section 71 Creates s. 551.093, F.S., making technical changes to current s. 550.2415, F.S., relating to prohibitions against racing animals under certain conditions.
- Section 72 Creates s. 551.0941, F.S., making technical changes to current s. 550.255, F.S., relating to penalty for conducting unauthorized race.
- Section 73 Creates s. 551.0942, F.S., making technical changes to current s. 550.235, F.S., relating to conspiring to prearrange the result of an event.
- Section 74 Creates s. 551.0943, F.S., making technical changes to current s. 550.285, F.S., relating to obtaining goods or services with intent to defraud.
- Section 75 Creates s. 551.0944, F.S., making technical changes to current s. 550.3615, F.S., relating to bookmaking on the grounds of a permitholder; duties of employees.
- Section 76 Creates s. 551.095, F.S., making technical changes to current s. 550.0235, F.S., relating to limitation of civil liability.
- Section 77 Creates part III of chapter 551, F.S., relating to slot machines.
- Section 78 Amends s. 551.101, F.S., relating to slot machine gaming authorized.
- Section 79 Amends s. 551.102, F.S., providing definitions related to slot machines.
- Section 80 Amends s. 551.104, F.S., relating to license to conduct slot machine gaming.
- Section 81 Amends s. 551.104, F.S., relating to license to conduct slot machine gaming; allowing for additional slot machine licensure pursuant to an amended Seminole Gaming Compact.
- Section 82 Amends s. 551.105, F.S., relating to slot machine license renewal.
- Section 83 Making technical changes to s. 551.106, F.S., relating to license fee; tax rate; penalties.
- Section 84 Making technical changes to s. 551.108, F.S., relating to prohibited relationships.
- Section 85 Making technical changes to s. 551.109, F.S., relating to prohibited acts; penalties.
- Section 86 Making technical changes to s. 551.111, F.S., relating to legal devices.
- Section 87 Making technical changes to s. 551.112, F.S., relating to exclusions of certain persons.
- Section 88 Making technical changes to s. 551.113, F.S., relating to persons prohibited from playing slot machines.
- Section 89 Making technical changes to s. 551.114, F.S., relating to slot machine gaming areas.

- Section 90 Making technical changes to s. 551.116, F.S., relating to days and hours of operation.
- Section 91 Making technical changes to s. 551.117, F.S., relating to penalties.
- Section 92 Making technical changes to s. 551.118, F.S., relating to compulsive or addictive gambling prevention program.
- Section 93 Making technical changes to s. 551.119, F.S., relating to caterer's license.
- Section 94 Making technical changes to s. 551.121, F.S., relating to prohibited activities and devices; exceptions.
- Section 95 Making technical changes to s. 551.122, F.S., relating to rulemaking.
- Section 96 Amends s. 551.123, F.S., relating to legislative authority; administration of part.
- Section 97 Creates part IV of ch. 551, F.S., relating to cardrooms.
- Section 98 Transfers, renumbers, and amends s. 849.086, F.S., as s. 551.20, F.S., relating to cardrooms authorized.
- Section 99 Creates part V of ch. 551, F.S., relating to occupational employees and associates.
- Section 100 Transfers, renumbers and amending s. 550.105, F.S., as s. 551.301, F.S., relating to racetrack and jai alai occupational licenses.
- Section 101 Transfers, renumbers, and amends s. 551.107, F.S., as s. 551.302, F.S., relating to slot machine occupational licenses.
- Section 102 Repeals s. 551.1045, F.S., relating to temporary licenses.
- Section 103 Transfers, renumbers, and amends s. 849.086(6), F.S., as 551.303, F.S., relating to cardroom business and employee occupational licenses.
- Sections 104 - 112 Transfers and renumbers ss. 550.901 through 550.909, as ss. 551.31 through 551.318, F.S., relating to the Interstate Compact on Licensure of Participants in Pari-mutuel Wagering.
- Sections 113 - 114 Transfers and renumbers ss. 550.910 and 550.911, F.S., as ss. 551.319 and 551.32, F.S.
- Section 115 Transfers, renumbers and amends s. 550.912, F.S., as s. 551.321, F.S.
- Section 116 Transfers and renumbers s.550.913, F.S., as s. 551.322, F.S.
- Section 117 Creates part VI of ch. 551, F.S., relating to miscellaneous gaming.
- Section 118 Makes technical changes and conforms cross-references to changes made by the act.
- Section 119 Repeals s. 849.092, F.S.
- Section 120 Transfers, renumbers and amends s. 849.094, F.S. as s. 551.50, F.S., relating to game promotion in connection with sale of consumer products or services.
- Section 121 Transfers, renumbers and amends s 849.085, F.S., as s. 551.52, F.S., relating to certain penny-ante games not crimes; restrictions.
- Section 122 Transfers, renumbers and amends s. 849.0931, F.S., as s. 551.53, F.S., relating to bingo authorized; conditions for conduct; permitted use of proceeds; limitations.
- Section 123 Transfers, renumbers and amends s. 849.0935, F.S. as s. 551.54, F.S., relating to charitable, nonprofit organizations drawings by chance; required disclosures; unlawful acts and practices; penalties.
- Section 124 Transfers, renumbers and amends s, 849.141, F.S., as s. 551.55, F.S., relating to bowling tournaments
- Section 125 Transfers, renumbers and amends s 849.161, F.S., as s. 551.56, F.S., relating to amusement games or machines.
- Section 126 Making technical changes to s. 849.01, F.S. relating to gambling operations prohibited.
- Section 127 Repeals ss. 849.02, 849.03, 849.04, and 849.05, F.S.

- Section 128 Making technical changes to s. 849.07, F.S., relating to permitting gambling on billiard or pool table by holder of license.
- Section 129 Repeals s. 849.08, F.S.
- Section 130 Making technical changes to s. 849.09, F.S., relating to lottery prohibited; exceptions.
- Section 131 Making technical changes to s. 849.091, F.S., relating to chain letters, pyramid clubs, etc., declared a lottery; prohibited penalties.
- Section 132 Making technical changes to s. 849.0915, F.S., relating to referral selling.
- Section 133 Repeals s. 849.10, F.S.
- Section 134 Making technical changes to s. 849.11, F.S., relating to plays at games of chance by lot and transfers, rennumbers and amends s 849.12, F.S., as s. 849.11(2), F.S.
- Section 135 Repeals s. 849.13, F.S.
- Section 136 Making technical changes to s. 849.14, F.S., relating to bet on result of trial or contest of skill.
- Section 137 Making technical changes to s. 849.15, F.S., relating to slot machine or device and transfers, rennumbers and amends ss 849.16 through 849.23 and 849.235, F.S., as s. 849.15, F.S.
- Section 138 Amends s. 849.231, F.S., relating to gambling devices; manufacture, sale, purchase or possession unlawful; penalties and transfers, rennumbers and amends ss. 849.232 and 849.233, F.S., as s. 849.231, F.S.
- Section 139 Making technical changes to s. 849.25, F.S., relating to “bookmaking” defined; penalties; exceptions.
- Section 140 Making technical changes to s. 849.26, F.S., relating to gambling contracts and transfers, rennumbers and amends ss. 849.29 through 849.34, F.S., as s. 849.26, F.S.
- Section 141 Making technical changes to s. 849.35, F.S., relating to seizure and forfeiture of property used in the violation of lottery and gambling statutes and transfers, rennumbers and amends ss. 849.36 through 849.46, F.S., as s. 849.35, F.S.
- Section 142 Creates s. 849.47, F.S., relating to enforcement of chapter.
- Section 143 Directs the commission to conduct a study of greyhound racing in the state.
- Section 144 Directs the commission to conduct a study of the usage of medication in horseracing.
- Sections 145 - 171 update cross references to conform to changes made by the bill.
- Section 172 Provides for the DPMW to revoke for-profit permits issued before January 1, 2012, and not used since that date and prohibits the DPMW from approving or issuing new pari-mutuel wagering permits or slot machine licenses.
- Section 173 Provides for the reorganization process for implementing this bill.
- Section 174 Provides that except where noted otherwise, the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The fiscal impact of the bill is unknown at this time.

2. Expenditures:

The fiscal impact of the bill is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill is not expected to directly impact local revenues.

2. Expenditures:

The bill is not expected to directly impact local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill provides procedures for relocating or converting pari-mutuel wagering permits or reduces current requirements for pari-mutuel wagering licensees, such as reduced requirements for limited intertrack wagering licensees, it may reduce private sector costs through increased flexibility.

The bill requires operators of amusement games that award prizes to register with the DGC and pay a registration fee of \$100.

D. FISCAL COMMENTS:

The fiscal impact of the bill is unknown at the time. Because the bill creates a new agency, headed by a new commission, it likely has a significant fiscal impact on state revenues.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Retroactive Legislation

The bill directs the commission to revoke permits issued before January 1, 2012, that have not been used for the conduct of pari-mutuel wagering on horseracing, jai alai and greyhound racing, as defined by the bill. Such permitholders may claim that the retroactive application of this provision violates the Contract Clause of art. I, s. 10, U.S. Constitution, which prohibits states from passing laws which impair contract rights. However, the U.S. Supreme Court has found that "a lottery grant is not in any sense a contract, within the meaning of the constitution of the United States, but is simply a gratuity and license, which the state, under its police powers, and for the protection of the public morals, may at any time revoke, and forbid the further conduct of the lottery."³⁰

Compensation Claims

The bill directs the commission to revoke permits under specific situations. One of the provisions provides for the revocation of permits issued before January 1, 2012, that have not been used for the conduct of pari-mutuel wagering. Such permitholders may claim that such revocation constitutes a taking warranting compensation.

The Fifth Amendment of the U.S. Constitution provides that private property shall not be taken for public use without just compensation. "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."³¹ Thus, Florida courts have found no

³⁰ Douglas v. Commonwealth of Kentucky, 168 U.S. 488 (1897).

³¹ Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972).

unconstitutional taking in the retroactive application of statutes requiring revocation of certain occupational licenses and licenses to carry concealed firearms if the licensee was a convicted felon because such licensure is a privilege, not a vested right.³²

As to pari-mutuel wagering, "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right."³³ Likewise, the Florida Supreme Court has found that "[a]uthorized gambling is a matter over which the state may exercise greater control and exercise its police power in a more arbitrary manner"³⁴ Thus, the Florida Supreme Court found that, unlike permits to construct a building, "[i]t is doubtful if we can agree with counsel in concluding that a racing permit is a vested interest or right and after once granted cannot be changed."³⁵

Furthermore, compensation may not be warranted if the Legislature is deemed to have exercised its police powers, rather than powers of eminent domain.³⁶ "[T]he Government as condemnor may not be required to compensate a condemnee for elements of value that the Government has created, or that it might have destroyed under the exercise of governmental authority other than the power of eminent domain."³⁷ Thus, the loss of licenses to sell alcoholic beverages, for example, is not compensable.³⁸

Similar arguments have been made in states where pari-mutuel wagering has been prohibited after being licensed for many years. When Massachusetts banned greyhound racing by constitutional amendment in 2008, a licensed and operating dog track challenged the ban as a taking. The Supreme Judicial Court of Massachusetts rejected the argument, finding "[T]he plaintiffs here have no compensable property interest in their racing licenses."³⁹

If revoked permits are found to be a taking warranting compensation, just compensation equals the fair market value of the permit at the time of revocation. The fair market value of non-operating permits is uncertain. Such permits are a prerequisite to licensure for pari-mutuel wagering and, by themselves, do not appear to vest the holder with any rights. There are no application fees to receive a permit for pari-mutuel wagering and no fees to retain such a permit. Permits may not be transferred without state approval. While a pari-mutuel wagering permit is one pre-requisite to licensure to conduct cardrooms and slot machines, it is not the only pre-requisite. Not all permit holders may be able to obtain a license to conduct pari-mutuel wagering events, which would require adequate zoning and facilities.

B. RULE-MAKING AUTHORITY:

The bill transfers all rulemaking authority held by the DPMW and DOACS relating to gaming to the newly created DGC. It also gives the DGC rulemaking authority to implement, administer and enforce ch. 849, regarding prohibited gambling, and the newly consolidated ch. 551, F.S., which includes all authorized gaming, including arcades and bingo.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

³² See, e.g., *Crane v. Department of State, Div. of Licensing*, 547 So.2d 266, 267 (3d DCA 1989), citing *Mayo v. Market Fruit Co. of Sanford*, 40 So.2d 555, 559 (Fla. 1949).

³³ *Solimena v. State, Dept. of Business Regulation, Division of Pari-Mutuel Wagering*, 402 So.2d 1240 (3d DCA 1981), citing *State ex rel. Mason v. Rose*, 122 Fla. 413 (1936) and *Hialeah Race Course v. Gulf Stream Park Racing Association*, 37 So.2d 692.

³⁴ *Hialeah Race Course v. Gulfstream Park Racing Ass'n* 37 So.2d 692, 694 (Fla.1948)

³⁵ *State ex rel. Biscayne Kennel Club v. Stein*, 130 Fla. 517, 520 (1938).

³⁶ *City of Miami Springs v. J.J.T.*, 437 So.2d 200 (3d DCA 1983)("even the complete prohibition of a previously lawful and existing business does not constitute a taking where the owner is not deprived of all reasonable use of his property, as long as the prohibition promotes the health, safety and welfare of the community and is thus a valid exercise of the police power.")

³⁷ *U. S. v. Fuller* 409 U.S. 488, 491-492, 93 S.Ct. 801, 804 (U.S. Ariz.1973)

³⁸ See, e.g., *Yates v. Mulrooney*, 281 N.Y.S. 216, 219 (N.Y. App. Div. 1935); *Mugler v. Kansas*, 123 U.S. 623, 668-70 (1887).

³⁹ *Carney v. Attorney General*, 451 Mass. 803 (2008).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2014, the Select Committee on Gaming adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Amends definition of 'quarter horse race' to specify that races must qualify for race recognition under the 2014 AQHA rules.
- Deletes a new provision requiring a harness racing permitholder to file a contract with its horsemen's group in order to be eligible for slots licensure.
- Adds minimum qualifications standards for jai alai players and minimum roster size for jai alai permitholders.
- Amends new relocation provision to allow relocation within contiguous counties that have ratified pari-mutuel permits
- Provides approval process for slot machine licensure, contingent on a new compact with the Seminole Tribe that allows such gaming without the suspension of all revenue sharing. Provides eligibility criteria.
- Specifies it is unlawful to conduct game promotions or charitable drawings using slot machines or other similar gaming devices.
- Specifies that arcades and game promotions register within the Division of Amusements within the newly created department.
- Makes clarifying changes throughout the bill concerning the structure of the commission and department, conforming conflicting provisions, and deleting unconstitutional or obsolete provisions.