**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 Committee on Regulated Industries

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| BILL: | SB 832 |
| INTRODUCER: | Senator Negron |
| SUBJECT: | Fantasy Games |
| DATE: | January 26, 2016 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Kraemer | Imhof | RI | **Pre-meeting** |
| 2. | | | AGG | |
| 3. | | | AP | |

## I. Summary:

SB 832 creates ch. 547, titled "Fantasy Games" in the Florida Statutes. The bill requires operators of qualified fantasy or simulation sports games, educational games, or contests (fantasy games) which offer cash prizes to more than 750 members of the public, to register with the Department of Agriculture and Consumer Services (department). The initial registration fee is $500,000, and the annual renewal fee is $100,000.

Qualified fantasy games are those in which:

- The value of all prizes is disclosed in advance of the fantasy game;
- All winning outcomes reflect the relative knowledge and skill of game participants, are determined by statistical results of performances by actual individuals, including athletes in sporting events; and
- A winning outcome is not based on the actual score, point spread, or performance of a single team or combination of such teams, or on any single performance of an individual athlete or player in a single event.
- The bill requires games operators to implement consumer protection procedures. The bill addresses the use of insider information, prohibitions against play by minors, restrictions for employees and game operators, restrictions against players, game officials, or other participants in a live sports game or contest from playing a fantasy game where the results of the individual's performance, team, or sport determine the outcome. Game operators must allow individuals to exclude themselves from accessing a fantasy game and prevent them from participating. In addition, the maximum number of fantasy games a single game participant may enter must be disclosed, and game operator must prevent participants from exceeding the maximum.

The bill provides that a game operator must further insure the integrity of its operations, by:

- Segregating game participants' funds from operational funds;

- Maintaining a reserve in the form of cash, cash equivalents, an irrevocable letter of credit, a bond, or a combination thereof equal to the amounts in all fantasy game accounts of game participants, to protect deposits made by authorized game participants;
- Annually contracting with a third party to perform an independent audit, and submitting the results of the audit to the department.

The bill provides that a game operator, an employee or agent who violates ch. 547 is subject to a civil penalty up to $1,000 per violation which may be recovered in a civil action against the violator by the department.

The bill exempts fantasy games from regulation under ch. 849, F.S.

## II. Present Situation:

### Introduction

The operation of fantasy sports activities in Florida has recently received significant publicity, much like the operation of internet cafes in recent years. Many states are now evaluating the status of fantasy gaming activities in their jurisdictions,[1] as there are millions of participants.[2]

A fantasy game typically has multiple players who select and manage imaginary teams whose players are actual professional sports players. Fantasy game players compete against one another in various formats, including weekly leagues among friends and colleagues, season-long leagues, and on-line contests (daily and weekly) entered by using the internet through personal computers or mobile telephones and other communications devices. There are various financial arrangements among players and game operators.

While Florida law does not specifically address fantasy games, but as discussed below, such activity appears to violate s. 849.14, F.S.,[3] which provides that a person who wagers any "thing of value" upon the result of a contest of skill or endurance of human or beast, or who receives any money wagered, or who knowingly becomes the custodian of money or other thing of value that is wagered, is guilty of a second degree misdemeanor.[4]

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[1] *See* Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, Journal of Sports & Entertainment Law, Harvard Law School Vol. 3 (Jan. 2012) ( available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272 (last visited Jan. 25, 2016), and Jonathan Griffin, *The Legality of Fantasy Sports,* National Conference of State Legislatures Legisbrief (Sep. 2015) (on file with the Committee on Regulated Industries).

[2] According to the Fantasy Sports Trade Association, which states it represents the interests of 57 million fantasy sports players, fantasy sports leagues were originally referred to as "rotisserie leagues" with the development of Rotisserie League Baseball in 1980, by magazine writer/editor Daniel Okrent, who met and played it with friends at a New York City restaurant La Rotisserie Francaise. *See* http://fsta.org/about/history-of-fsta/ (last visited Jan. 25, 2016).

[3] *See* Op. Att'y Gen. Fla. 91-03 (1991)

[4] A conviction for a second degree misdemeanor may subject the violator to a definite term of imprisonment not exceeding 60 days, and a fine not exceeding $500. *See* ss. 775.082 and 775.083, F.S.

In 2013, Spectrum Gaming Group, as part of a Gambling Impact Study prepared for the Florida Legislature, analyzed data related to participation by adults in selected activities.[5] Based on 2012 U.S. Census data, participation in fantasy sports leagues in the prior 12 months (nearly 9 million adults), and those who participate two or more times weekly (nearly 3 million adults), was greater than attendance at horse races in the prior 12 months (6,654,000 adults) with 159,000 attending two or more times weekly.[6]

**Gambling in Florida**

In general, gambling is illegal in Florida.[7] Chapter 849, F.S., prohibits keeping a gambling house,[8] running a lottery,[9] or the manufacture, sale, lease, play, or possession of slot machines.[10]

Section 7 of Article X of the 1968 State Constitution provides, "Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state."[11]

Section 15 of Article X of the State Constitution (adopted by the voters in 1986) provides for state operated lotteries:

> Lotteries may be operated by the state…. On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.

Section 24.102, F.S., creates the Department of the Lottery and states the Legislature's intent that it be self-supporting and revenue-producing and function as an entrepreneurial business enterprise.[12]

Section 23 of Article X of the State Constitution (adopted by the voters electors in 2004) provides for slot machines in Miami-Dade and Broward Counties:

> After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot

[5] *See* Spectrum Gaming Group Gambling Impact Study (Gambling Impact Study) at http://www.leg.state.fl.us/gamingstudy/docs/FGIS_Spectrum_28Oct2013.pdf (Oct. 28, 2013) (last visited Jan. 25, 2016).
[6] *Id.*, Figure 22 at p. 67.
[7] Section 849.08, F.S.
[8] Section 849.01, F.S.
[9] Section 849.09, F.S.
[10] Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S.
[11] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.
[12] Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., provides the legislative purpose and intent in regard to the lottery.

> machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

Chapter 550, F.S., authorizes pari-mutuel wagering at licensed tracks and frontons and provides for state regulation.[13] Chapter 551, F.S., authorizes slot machine gaming at the location of certain licensed pari-mutuel locations in Miami-Dade County or Broward County and provides for state regulation.[14] Chapter 849, F.S., authorizes cardrooms at certain pari-mutuel facilities.[15] A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[16]

Chapter 849, F.S., also authorizes, with conditions, penny-ante games,[17] bingo,[18] charitable drawings, game promotions (sweepstakes),[19] bowling tournaments, and amusement games and machines.[20]

**The Professional and Amateur Sports Protection Act of 1992 (PASPA)**

In 1992, the U.S. Congress enacted the Professional and Amateur Sports Protection Act, which provides that it is unlawful for a governmental entity[21] or any person to sponsor, operate, advertise, or promote:

> a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

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[13] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[14] *See* ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.
[15] Section 849.086, F.S. Section 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.
[16] *See* section 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right", citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936).
[17] Section 849.085, F.S.
[18] Section 849.0931, F.S.
[19] Section 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[20] Section 849.161, F.S.
[21] Governmental entities are also prohibited from licensing such activities or authorizing them by law or compact. *See* https://www.gpo.gov/fdsys/pkg/USCODE-2008-title28/html/USCODE-2008-title28-partVI-chap178-sec3702.htm (last visited Jan. 25, 2016).

The prohibited activity is generally known as "sports betting." However, PASPA does not apply to pari-mutuel animal racing or jai alai games. It does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering conducted by a governmental entity between January 1, 1976, and August 31, 1990.

The prohibition against sporting betting also does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering lawfully conducted, where such activity was authorized by law on October 2, 1991, and was conducted in a state or other governmental entity at any time between September 1, 1989, and October 2, 1991. As noted above, Florida's Lottery was approved by the voters in 1986.

**The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)**

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)[22] was signed into law by President George W. Bush on October 13, 2006.[23] Internet gambling is not determined to be legal in a state, nor illegal. Instead, UIGEA targets financial institutions in an attempt to prevent the flow of money from an individual to an internet gaming company. Congress found that enforcement of gambling laws through new mechanisms "are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders."[24]

As to the impact of UIGEA on gambling activities, the law expressly states that none of its provisions "shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States."[25]

Therefore, although UIGEA excludes from its terms funds received by financial institutions that are generated from bets or wagers of participants in certain fantasy sports games and contests,[26] it does not authorize fantasy sports betting or wagering activities in Florida.

Section 849.14, F.S. states:

> Unlawful to bet on result of trial or contest of skill, etc.—Whoever stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill, speed or power or endurance of human or beast, or whoever receives in any manner whatsoever any money or other thing of value staked, bet or wagered, or offered for the purpose of being staked, bet or wagered, by or for any other person upon any such result, or whoever knowingly becomes the custodian or depositary of any money or other thing of value so staked, bet, or wagered upon any such result, or whoever aids, or assists, or abets in any manner in any of such acts all of

[22] *See* https://www.gpo.gov/fdsys/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIV-chap53.pdf, (UIGEA online) at p. 46 (last visited Jan. 25, 2016).
[23] The provisions of UIGEA were adopted in Conference Committee as an amendment to H.R. 4954 by Representative Daniel E. Lungren (CA-3), "The SAFE Ports Act of 2006."
[24] *See* 31 U.S.C. s. 5361(a)(4), UIGEA online, at p. 46.
[25] *See* 31 U.S.C. s. 5361(b).
[26] *See* 31 U.S.C. s. 5362(1)(E)(ix), UIGEA online, at p. 47.

> which are hereby forbidden, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

In 2015, at least one fantasy sports site allows for "One-Week Fantasy Football Leagues for Real Money."[27] In 1991, the Florida Attorney General, in AGO 91-03,[28] evaluated the scenario in which groups of football fans (contestants) paid for the right to manage a team under certain specified conditions. The Attorney General stated:

> You ask whether the formation of a fantasy football league by a group of football fans in which contestants pay $100 for the right to "manage" one of eight teams violates the state's gambling laws. You state that these teams are created by contestants by "drafting" players from all current eligible National Football League (NFL) members. Thus, these fantasy teams consist of members of various NFL teams.
>
> According to your letter, each week the performance statistics of the players in actual NFL games are evaluated and combined with the statistics of the other players on the fantasy team to determine the winner of the fantasy game and their ranking or standing in the fantasy league. No games are actually played by the fantasy teams; however, all results depend upon performance in actual NFL games. Following completion of the season, the proceeds are distributed according to the performance of the fantasy team.

The Attorney General cited Florida case law to address the distinction between a "purse, prize or premium" and a "stake, bet or wager."[29] As each contestant paid $100 to participate by managing one of eight teams, and the resulting $800 in proceeds were used for prizes, the proceeds qualify as a "stake, bet or wager" on the result of a contest of skill. Specifically, the prizes are paid based upon the performance of the individual professional football players in actual games. Based on the language in s. 849.14, F.S. above, the Attorney General determined that the operation of fantasy sports leagues as described would violate Florida law.

**Gaming Compact with the Seminole Tribe of Florida**

The current gaming compact with the Seminole Tribe of Florida (Seminole Tribe) dated April 7, 2010 (the 2010 gaming compact)[30] provides that it is not a crime for a person to participate in

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[27] *See* https://www.fanduel.com/fantasy-football (last visited Jan. 25, 2016).
[28] *See* http://myfloridalegal.com/. . . 91-03 (last visited Jan. 25, 2016).
[29] The distinction was reaffirmed in *Creash v. State*, 179 So. 149, 152 (Fla. 1938) as follows: "In gamblers' lingo, 'stake, bet or wager' are synonymous and refer to the money or other thing of value put up by the parties thereto with the understanding that one or the other gets the whole for nothing but on the turn of a card, the result of a race, or some trick of magic. A 'purse, prize, or premium' has a broader significance. If offered by one (who in no way competes for it) to the successful contestant in a [feat] of mental or physical skill, it is not generally condemned as gambling, while if contested for in a game of. . . . chance, it is so considered. . . It is also banned as gambling if created . . .by . . . contributing to a fund from which the 'purse, prize, or premium' contested for is paid, and wherein the winner gains, and the other contestants lose all."
[30] The 2010 gaming compact was executed by the Governor and the Seminole Tribe on April 7, 2010, ratified by the Legislature, effective April 28, 2010, and approved by U.S. Secretary of the Interior, pursuant to the Indian Gaming Regulatory Act of 1988, on June 24, 2010. It took effect when published in the Federal Register on July 6, 2010. The 20-year

raffles, drawings, slot machine gaming, or banked card games (e.g., blackjack or baccarat) at a tribal facility operating under the 2010 gaming compact.[31]

The 2010 gaming compact also provides for revenue sharing payments from the Seminole Tribe to the state. For its exclusive authority during a five-year period[32] to offer banked card games on tribal lands at five locations, and to offer slot machine gaming during the 20-year term of the 2010 gaming compact, outside Miami-Dade and Broward Counties, the Seminole Tribe pays the State of Florida a share of "net win" (approximately $240 million per year).[33]

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

***Internet Gaming under the 2010 Gaming Compact and the Proposed 2015 Gaming Compact***

Although the 2010 gaming compact provides that any change in state law to allow internet/on-line gaming (or any functionally remote gaming system that permits gaming from a home or any other location other than a casino or other commercial gaming facility), current revenue sharing payment are not impacted. The guaranteed $1 billion payments have been paid by the Seminole Tribe, and the percentage revenue share amounts continue.[34] There is no definition of internet in

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term of the 2010 gaming compact expires July 31, 2030, unless renewed. Section 285.710(1)(f), F.S., designates the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation as the "state compliance agency" having authority to carry out the state's oversight responsibilities under the 2010 gaming compact *See* *http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf* (last accessed Jan. 25, 2016).

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

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

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

[34] Enactment of state law to allow internet or on-line gaming could have impacted the $1 billion guaranteed revenue sharing in payable through Year 5 of the 2010 gaming compact, which provides in Part XI, Paragraph B3 that if the Seminole Tribe's Net Win at all of its casinos dropped more than five percent (5%) below its Net Win from the previous twelve month period, the Tribe would be required to pay only the percentage revenue share amount, not the guaranteed minimum revenue share. If (a) the decline in Net Win is due to acts of God, war, terrorism, fires, floods, or accidents causing damage to or destruction of

either the 2010 gaming compact or the proposed 2015 gaming compact, although the term "Internet" is defined in the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA).[35]

If fantasy games are classified as internet/on-line gaming, authorizing fantasy games in Florida would trigger an impact to the revenue sharing provisions in the proposed 2015 gaming compact.[36]

**Class III Gaming under the Indian Gaming Regulatory Act**

If fantasy games are instead classified as Class III gaming rather than internet gaming, authorizing fantasy games in Florida would trigger an impact to the revenue sharing provisions of both the 2010 gaming compact[37] and the proposed 2015 gaming compact.[38] The payments due to the state will cease.

Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA).[39] The 2010 gaming compact authorizes the Seminole Tribe to conduct Class III gaming at its seven tribal facilities in Florida.[40]

Under IGRA, gaming is categorized in three classes:

- **Class I** gaming means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations;

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one or more of the casinos, or (2) the Seminole Tribe is authorized by law to offer internet/on-line gaming, then Paragraph B3 does not apply. Currently, the Seminole Tribe is paying the percentage revenue share amount.

[35] UIGEA defines the term "Internet" as the international computer network of interoperable packet switched data networks. *See* 31 U.S.C. s. 5362(5).

[36] Part XII, Paragraph 10 of the proposed 2015 gaming compact states:

> State law currently does not permit internet gaming involving wagering. However, after any change in State law to affirmatively allow internet/on-line gaming (or any functionally equivalent remote gaming system that permits a person to game from home or any other location that is remote from a casino or other commercial gaming facility), the Tribe shall no longer be required to make payments to the State based on the Guaranteed Revenue Sharing Cycle Payment and shall not be required to make the Guaranteed Minimum Compact Term Payment. Instead, if after the Initial Payment Period, the Tribe shall make payments based on the percentage amounts in Part XI, Section B.1.(c). This subsection does not apply if the Tribe offers, to players in the State, internet gaming involving wagering (or any functionally equivalent remote gaming system that permits a person to game from home or any other location that is remote from any of the Tribe's Facilities), as a Covered Game or as authorized by State law. Nothing herein limits the Tribe's right to offer internet gaming involving wagering under any applicable federal law. Except as provided in this Part, any expanded gaming activities consistent with Part XII, Sections A. or B. authorized or permitted by the State shall relieve the Tribe of its obligations to make both the Guaranteed Minimum Compact Term Payment and any further Guaranteed Revenue Sharing Cycle Payment.

[37] *See* Paragraph A of Part XII of the 2010 gaming compact.

[38] *See* Paragraph A of Part XII of the 2015 gaming compact..

[39] *See* Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq*.

[40] The Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida* (Gaming Compact) was approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. *See* http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last accessed Jan. 25, 2016).

- **Class II** gaming includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo, and certain non-banked card games if not explicitly prohibited by the laws of the state and if played in conformity with state law; and
- **Class III** gaming includes all forms of gaming that are not Class I or Class II, such as house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

If fantasy games are classified as Class III gaming, authorizing fantasy games in Florida, i.e., additional Class III gaming, would trigger a violation of the exclusivity provisions in the 2010 gaming compact or the proposed 2015 gaming compact,by canceling certain proposed revenue sharing provisions of the compact (specifically the proposed $3 billion guarantee), and granting the Tribe the right to offer similar internet/on-line gaming, including sports betting.

An opinion of the National Indian Gaming Commission (commission) dated March 13, 2001,[41] while evaluating sports betting, is instructive on classification considerations and the use of the internet for on-line gaming.

The game analyzed by the commission for play in Arizona and California was determined to be a sports betting game classified as Class III gaming. Because sports betting is unlawful in those two states (as well as most other states), and "because the use of the Internet is not authorized by IGRA," the game could not be operated pursuant to IGRA. Further, because sports betting did not fit within Class II gaming, stated the commission, "it is a Class III form of gaming" that may only be played pursuant to a gaming compact between a tribe and a state.

## III. Effect of Proposed Changes:

SB 832 creates ch. 547, titled "Fantasy Games." The bill requires operators of qualified fantasy or simulation sports games, educational games, or contests (fantasy games) which offer cash prizes to more than 750 members of the public, to register with the Department of Agriculture and Consumer Services (department). The initial registration fee is $500,000, and the annual renewal fee is $100,000.

Qualified fantasy games are those in which:
- The value of all prizes and awards offered to winning game participants must be established and disclosed in advance of the fantasy game;
- All winning outcomes reflect the relative knowledge and skill of game participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events; and
- A winning outcome is not based on the score, point spread, or performance of a single team or combination of such teams, or on any single performance of an individual athlete or player in a single event.

The bill requires games operators to implement procedures intended to protect consumers that:
- Prevent employees or relatives living in a game operators household from competing in a fantasy game with a cash prize over $5;

[41] *See* http://www.nigc.gov/images/uploads/game-opinions/WIN Sports Betting Class III.pdf (last visited Jan. 25, 2016).

- Prohibit the game operator from participating in a fantasy game he or she offers;
- Prevent the sharing of confidential information by employees or agents that could affect fantasy game play with third parties, if that information is obtained solely as a result of being an employee or agent, until the information is made publicly available;
- Verify that a game participant is 18 years of age or older;
- Restrict a player, game official, or other participant in a live sports game, educational game or contest from participating in a fantasy game whose outcome is determined, in whole or in part, on the performance of that individual, the individual's team, or the accumulated statistical results of the sport or competition in which he or she is a player, game official, or other participant;
- Allow individuals to exclude themselves from accessing a fantasy game and take reasonable steps to prevent those individuals from participating in a fantasy game;
- Disclose the number of fantasy games a single game participant may enter and take reasonable steps to prevent game participants from exceeding that number;
- Segregate game participants' funds from operational funds; and
- Maintain a reserve in the form of cash, cash equivalents, an irrevocable letter of credit, a bond, or a combination thereof equal to the amounts in all fantasy game accounts of game participants, to protect deposits made by authorized game participants.

The bill requires a game operator offering fantasy games in the state to annually contract with a third party to perform an independent audit, consistent with the standards established by the Public Company Accounting Oversight Board,[42] to ensure compliance with ch. 547. The results of the independent audit must be submitted by the game operator to the department.

The bill provides that a game operator, an employee or an agent who violates ch. 547 is subject to a civil penalty up to $1,000 per violation which may be recovered in a civil action against the violator by the department.

The bill exempts fantasy games from regulation under ch. 849, F.S., which addresses gambling.

The bill provides a July 1, 2016, effective date.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

[42] The Public Company Accounting Oversight Board (PCAOB) states on its website: PCAOB is a nonprofit corporation established by Congress to oversee the audits of public companies in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB also oversees the audits of broker-dealers, including compliance reports filed pursuant to federal securities laws, to promote investor protection. *See* http://pcaobus.org/Pages/default.aspx (last visited Jan. 25, 2016).

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Game operators must pay an initial registration fee of $500,000, and annually renew the registration by paying a fee of $100,000.

B. Private Sector Impact:

Game operators must pay an initial registration fee of $500,000, and annually renew the registration by paying a fee of $100,000.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services (department) is designated as the entity that game operators must register with in order to offer fantasy games in Florida. The department has indicated that rulemaking authority is necessary to promulgate forms for use by registrant game operators, as the information authorized to be obtained for registration is not stated in the bill.[43]

The department has estimated receipt of revenues of $1,000,000 from registration fees in the 2016-2017 fiscal year, as states that have enact similar legislation have received only two registrations.[44] Total expenditures are estimated at $281,427 ($89,254 in recurring costs for a staff attorney; $102,599 for non-recurring costs in the initial fiscal year only, for software development, testing, and deployment; and $89,614 for non-operating costs for administrative support, which is inclusive of a General Revenue Service Charge of $80,000.)

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

The bill provides on lines 114-115 that fantasy games are "exempt from regulation under chapter 849." Chapter 849, F.S., addresses gambling, and its regulations are targeted to limited authorized activities such as penny ante-games (card and domino games in which a player's winnings in a single hand or game do not exceed $10; s. 849.085, F.S.), and cardrooms at licensed pari-mutuel facilities (s. 849.086, F.S.). Bingo (s. 849.0931, F.S.), and game promotions (s. 849.094, F.S.) are authorized by ch. 849, F.S., and the required manner of conducting games

[43] *See 2016 Department of Agriculture and Consumer Services Analysis for SB 832 (*Nov. 25, 2015 (on file with Senate Committee on Regulated Industries), at p. 2.
[44] *Id*., at p. 3.

is established. An amendment stating that ch. 849, F.S., does not apply to fantasy games should be considered.

The bill does not provide rulemaking authority to the Department of Agriculture and Consumer Services (department) respecting registration requirements or authority to verify that the fantasy game operators have implemented the specified procedures required to protect consumers, including restrictions on employees and the game operator, the sharing of confidential information not known to the public, segregation of company funds from the funds of game participants, maintenance of reserves equal to the total amount deposited by all game participants, contracting with an independent auditor, and submission of the audit results to the department.

The department further notes that the bill does not identify a specific state agency to which civil penalties to the state for violations of ch. 547 should accrue, in the event that the department does not initiate a civil action to recover those penalties.[45] In addition, no administrative remedies are provided, as the department is granted the authority to file a civil action for all violations, whether significant or of a minor nature.[46]

Should rulemaking authority be granted to the department, consideration should be given to stating that compliance with the rules of the Department of Agriculture and Consumer Services does not authorize and is not a defense to a charge of a violation of any other law. Similar language is included in s. 849.084, F.S., regarding regulation by the department of a registered game promotion (a contest, game of chance, sweepstakes, or gift enterprise incidental to the sale of consumer products or services in Florida and other states).

An amendment should be considered to address the statement on lines 102-103 of the bill that the performance of an independent audit by a third party "to ensure compliance" with the provisions in ch. 547. As stated by the Public Company Accounting Oversight Board, an auditor's report is the medium through which an auditor's opinion is expressed, or, if circumstances require, an opinion is disclaimed. In either case, whether the audit has been made in accordance with the standards of the board must be stated, and the standards require a statement whether the financial statements are presented in conformity with generally accepted accounting principles. The auditor must also identify those circumstances in which such principles have not been consistently observed in the preparation of the financial statements (current period relative to the preceding period).

Further, as noted by the department, after submission of the audit to it, the audit must be reviewed to determine if the audit reflects violations of the provisions of ch. 547.

## VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 547.01, 547.02, 547.03, and 547.04.

[45] *Id*., at p. 2.
[46] *Id.*

## IX. Additional Information:

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

None.

B. Amendments:

None.