HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7037 PCB TGC 17-01 Gaming
SPONSOR(S): Tourism & Gaming Control Subcommittee, La Rosa and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Tourism & Gaming Control Subcommittee	10 Y, 5 N	Sarsfield	Barry
1) Ways & Means Committee	11 Y, 7 N	Aldridge	Langston
2) Commerce Committee			

SUMMARY ANALYSIS

The bill ratifies and approves a 2017 Gaming Compact between the Seminole Tribe of Florida (Tribe) and the State of Florida (State), and authorizes the Governor to execute the 2017 Compact. Under its terms, the 2017 Compact extends for 20 years both the Tribe's current exclusive authorization to conduct banked games statewide and the Tribe's current exclusive authorization to conduct slot machine gaming outside of Miami-Dade and Broward Counties. In exchange, the Tribe will make revenue sharing payments totaling at least $3 billion to the State during the first seven years of the 2017 Compact. The Tribe may stop or reduce revenue sharing if the State authorizes specified gaming in violation of the exclusivity afforded by the 2017 Compact.

The 2017 Compact reincorporates many of the same provisions of the Gaming Compact between the Tribe and State executed on April 7, 2010 (2010 Compact), as well as providing for the following:

- Prospective ratification and approval by the Legislature;
- Fixed 20-year term with no scheduled changes, extensions or expirations during the term;
- Tribe receives exclusive authorization to conduct banked games at 5 facilities for full 20-year term;
- Tribe maintains exclusive authorization to conduct slot machine gaming outside Miami-Dade and Broward Counties for full 20-year term;
- Maintains current level of monthly revenue sharing until the 2017 Compact becomes effective;
- Once effective, increases revenue sharing, including a guaranteed $3 billion in the first seven years;
- The State's portion of revenue share, after a 3 percent distribution to local governments, must be allocated to specified education programs to maintain the Tribe's revenue sharing obligations;
- Any new type or new location of class III games not in existence as of February 1, 2017, either reduces or ceases revenue sharing payments;
- Any reductions in the number of live performances at pari-mutuel facilities below current statutory requirements impacts revenue sharing payments;
- Improves the process for identifying, resolving and/or curing breaches of the Tribe's exclusivity.

In addition, the bill amends various substantive provisions in the chapters of the Florida Statutes governing pari-mutuel wagering, cardroom gaming, slot machine gaming, and general gambling. The bill:

- Clarifies slot machine gaming is not authorized outside of Miami-Dade and Broward Counties;
- Clarifies that only traditional, pari-mutuel-style poker games are authorized in cardrooms;
- Provides for the mandatory revocation of dormant and delinquent permits, under certain circumstances;
- Provides for the discretionary revocation of certain permits, under certain circumstances;
- Prohibits the issuance of new permits, and prohibits the conversion of permits;
- Prohibits the transfer or relocation of pari-mutuel permits or licenses.

The bill is expected to have a positive fiscal impact on state and local government funds; however, the Revenue Estimating Conference has not yet reviewed the bill.

The bill provides for an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

General Overview of Gaming in Florida

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,[5] bingo,[6] cardrooms,[7]charitable drawings,[8] game promotions (sweepstakes),[9] and bowling tournaments.[10]

Pari-Mutuel Wagering

For many decades, pari-mutuel wagering has been authorized in Florida for jai alai, greyhound racing, and three specific forms of horseracing (thoroughbred horse racing, harness horse racing and quarter horse racing). These activities are overseen and regulated by the Division of Pari-Mutuel Wagering (Division) with the Department of Business and Professional Regulation (DBPR). The Division's 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.[11]

Pari-mutuel is defined as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes."[12]

Chapter 550, F.S., provides specific permitting and licensing requirements, taxation provisions, and regulations for the conduct of the pari-mutuel industry. Pari-mutuel wagering activities are limited to operators who have received a permit from the Division, which is then subject to ratification by county referendum.[13] Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities.[14] Certain permitholders are also authorized to operate cardrooms[15] and slot machines at their facility, as discussed further below.[16]

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[1] s. 849.08, F.S.
[2] s. 849.01, F.S.
[3] s. 849.09, F.S.
[4] s. 849.16, F.S.
[5] s. 849.085, F.S.
[6] s. 849.0931, F.S.
[7] s. 849.086, F.S.
[8] s. 849.0935, F.S.
[9] s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[10] s. 546.10, F.S.
[11] 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. In 1993 the Department of Business Regulation and the Department of Professional Regulation were merged to become the DBPR.
[12] s. 550.002(22), F.S.
[13] s. 550.0651, F.S.
[14] s. 550.0115, F.S.
[15] s. 849.086, F.S.
[16] s. 551.104, F.S.

Currently in Florida there are 50 pari-mutuel wagering permits, and 5 non-wagering permits.[17] There are 38 pari-mutuel permitholders licensed to operate during Fiscal Year 2016-2017, in addition to one thoroughbred sales facility that holds a limited license to conduct intertrack wagering. There are eight pari-mutuel facilities that have been licensed to operate slot machines. Several locations have multiple permits that operate at a single facility. Chapter 550, F.S., specifies circumstances under which certain pari-mutuel permits may be revoked, relocated, or converted.

The following types of permits are licensed to operate during Fiscal Year 2016-2017:

- 19 Greyhound permits
- 5 Thoroughbred permits
- 1 Harness permit
- 5 Quarter Horse permits
- 8 Jai-Alai permits

Patrons at a racetrack may also wager on races hosted at other tracks, which 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 of the host.[18] To offer intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing and meet other requirements.[19]

Lotteries

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."[20]

To allow activities that would otherwise be illegal lotteries, the Legislature has carved out several narrow exceptions to the statutory lottery prohibition. Statutory exceptions are provided for charitable bingo[21], charitable drawings[22], and game promotions[23]. Charities use drawings or raffles as a fundraising tool. Organizations suggest a donation, collect entries, and randomly select an entry to win a prize. Under s. 849.0935, F.S., qualified organizations may conduct drawings by chance, provided the organization has complied with all applicable provisions of Chapter 496, F.S. Game promotions, often called sweepstakes, are advertising tools by which businesses promote their goods or services. As they contain the three elements of a lottery: consideration, chance, and prize, they are generally prohibited by Florida law unless they meet a statutory exception.[24]

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. The Florida Lottery—known formally as the Florida Education Lotteries—benefits education by funding the State Education Lotteries Trust Fund. Section 15 of Article X of the State Constitution provides as follows:

> 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

[17] See http://www.myfloridalicense.com/dbpr/pmw/documents/CurrentPermitholdersList.pdf for a list of current permitholders.
[18] See s. 550.002, F.S., for definitions of "intertrack wagering," "simulcasting," and "guest track."
[19] *See* s. 550.615, F.S.
[20] 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 new state constitution was ratified by the electorate on November 5, 1968.
[21] s. 849.0931, F.S.
[22] s. 849.0935, F.S.
[23] s. 849.094, F.S.
[24] *Little River Theatre Corp v. State*, 185 So. 854, 868 (Fla. 1939).

Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law. [25]

Cardrooms

Cardrooms were authorized at pari-mutuel facilities in 1996.[26] 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, a permitholder 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.[27]

The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. Currently, 24 pari-mutuel facilities are operating cardrooms. No-limit poker games are permitted. 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.

A pari-mutuel facility that operates a cardroom may only offer authorized games within the cardroom. An "authorized game" is defined as "a game or series of games of poker or dominos which are played in a nonbanking manner."[28] The licensed cardrooms are prohibited from offering "banked" card games.

In recent years, several cardrooms in the state have begun operating "designated player games." Designated player games (also known as player-banked games) are card games in which a designated player occupies the position of the dealer. Rather than competing against each other, players compete solely against the designated player to determine the game's winner. Instead of competing for a common pot of winnings, players wager against the designated player, who collects from losers and pays winners from their own bank.

In July 2014, the Division adopted rules establishing requirements for such games. Under the resulting rule, Chapter 61D-11.002(5), F.A.C. (DP Rule), cardroom operators are required to determine house rules for the operation of designated player games.[29] The house rules must establish uniform requirements to be a designated player, ensure that the opportunity to be the dealer rotates around the table, and not require the designated player to cover all wagers.[30]

In October 2015, the Division proposed rule changes to effectively ban designated player games and delete the requirements for operation of designated player games.[31] After a rule challenge was filed against the proposed rule changes, the Division issued a Notice of Change revising its proposed rules by removing the prohibition against designated player games. However, the revised proposed rule changes maintained the repeal of established criteria for designated player games.[32] The revised proposed rule changes were challenged at the Division of Administrative Hearings (DOAH). After a hearing at DOAH, an Administrative Law Judge (ALJ) ruled that the Division lacked authority to repeal the DP Rule.[33] The DOAH ruling is currently under appeal.[34]

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[25] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., 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.
[26] s. 20, Ch. 96-364, Laws of Fla.
[27] s. 849.086(5)(b), F.S.
[28] s. 849.086, F.S.
[29] Rule 61D-11.002(5), F.A.C.
[30] *Id*.
[31] Proposed Rule 61D-11.002, F.A.C. (Published in F.A.R. Oct. 19, 2015).
[32] Proposed Rule 61D-11.002, F.A.C. (Notice of Change. Jan. 15, 2016).
[33] *Tampa Bay Downs, Inc. v. Dep't of Bus. & Prof. Reg.*, Case No. 15-7022RP (Fla. DOAH Aug. 26, 2016).
[34] *Department of Business and Professional etc. vs. Dania Entertainment Center, LLC; et al.*, Case Number 1D16-4275, Fla. 1st DCA

In January 2016, the Division issued administrative complaints against multiple pari-mutuel facilities, charging that the facilities were "operating a banking game or a game not specifically authorized" by state law.[35] After an evidentiary hearing at DOAH, an ALJ ruled that the designated player games, as conducted at a certain cardroom, violated the statutory prohibition of banking card games.[36] The DOAH ruling is currently under appeal.[37]

Slot Machine Gaming

After a brief period of legalization in the 1930s, slot machines were again prohibited in Florida in 1937.[38] Slot machines remained illegal until 2004, when voters approved a state constitutional amendment authorizing slot machines at specified pari-mutuel facilities in two counties, subject to local approval.

Section 23 of Article X of the State Constitution (adopted by the electors in 2004) authorizes slot machines in Miami-Dade and Broward Counties, as follows:

> 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 machines within existing, licensed pari-mutuel 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 pari-mutuel 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.

Pursuant to this constitutional authorization and the implementing statutes, slot machines are now authorized at eight pari-mutuel facilities in Broward and Miami-Dade Counties and are regulated under ch. 551, F.S.[39]

Under s. 551.102(4), F.S., slot machine-eligible facilities are defined as follows:

- 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;
- Any licensed pari-mutuel facility located within a county as defined in s. 125.011, F.S., provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter; or
- Any licensed pari-mutuel facility in any other county in which a majority of 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 license fee, and meets the other requirements of this chapter.

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[35] *See* Kam, Dara, *State targets pari-mutuels over card games*, Tampa Bay Business Journal, http://www.bizjournals.com/tampabay/news/2016/01/27/state-targets-pari-mutuels-over-card-games.html (last visited Feb. 17, 2017) and Administrative Complaints filed by the Division (Jan. 25, 2016)(on file with the Commerce Committee).
[36] *Dep't of Bus. & Prof. Reg. v. Jacksonville Kennel Club, Inc.*, Case No. 16-1009 (Fla. DOAH Aug. 1, 2016).
[37] *Jacksonville Kennel Club, Inc. vs. Department of Business and Professional etc.,* Case Number 1D16-5265, Fla 1st DCA
[38] s. 849.15, F.S., originally enacted by s. 1, ch. 18143, L.O.F. (1937).
[39] *See* Article X, Section 23, Florida Constitution; ch. 2010-29, L.O.F. and chapter 551, F.S.

Slot machine licensees are required to pay a license fee of $2 million per license year.[40] In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.[41] In order to remain eligible for slot machines, permitholders must conduct a full schedule of live racing or games, among other requirements.[42]

Seven pari-mutuel facilities obtained eligibility for slot machines through constitutional approval - the first clause above. An eighth pari-mutuel facility, Hialeah Park, was ineligible under the first clause because it had not operated live racing or games during 2002 and 2003. However, it obtained eligibility in 2010 with the enactment of Chapter 2009-170, L.O.F., which added the second and third clauses above to s. 551.102(4), F.S. Notably, the 2010 Compact was ratified by the same legislation that effectuated the second and third clauses.

To date, no facilities have obtained eligibility through the third clause. However, several pari-mutuels have relied upon that clause to claim entitlement to a slot machine license, which is currently the subject of a pending case before the Florida Supreme Court.[43] Certain permitholders seeking to add slot machines have argued that the phrase "after the effective date of this section" in the third clause applies to "a countywide referendum held." Based on this reading of the statute, many permitholders contend that any county can authorize slot machines under the statute above by virtue of its general authority to hold referenda. To date, Duval, St. Lucie, Brevard, Gadsden, Lee, Palm Beach, Hamilton and Washington counties have each held a countywide referendum. In each case, voters indicated their support for slot machines at the pari-mutuel facility in that county.

As the Division began receiving applications for slot machine licenses from pari-mutuel permitholders in these counties, DBPR requested a formal written opinion from Florida's Attorney General (AGO) regarding whether the Division was authorized by statute to issue slot machine licenses to facilities outside of Miami-Dade and Broward Counties.

In January 2012, the AGO stated that it was not, concluding that the phrase "after the effective date of this section" modified the phrase "a statutory or constitutional authorization" and not "countywide referendum."[44] The AGO determined that counties could not rely on their general authority to hold referenda but instead must have specific statutory authorization enacted after July 1, 2010, to hold referenda on the question of slot machines. Relying on the AGO, the Division has denied all new slot machine license applications since 2012.[45] Certain permitholders have disputed this interpretation and, after appealing one license denial to the 1st District Court of Appeal, cases are currently pending in the Florida Supreme Court and the 4th District Court of Appeal on the issue.[46]

Live Performance Requirements

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.[47] Currently the State requires that:

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[40] s. 551.106(1)(a), F.S.
[41] s. 551.106(2)(a), F.S.
[42] s. 551.104(1)(c), F.S.
[43] The first district court of appeal certified a question to the Florida Supreme Court and the Florida Supreme Court has accepted jurisdiction. *See Gretna Racing, LLC v. Dep't of Bus. & Prof. Reg*., 178 So. 3d 15 (Fla. Dist. Ct. App. 2015) *review granted sub nom. Gretna Racing, LLC v. Fla. Dep't of Bus. & Prof. Reg*., No. SC15-1929, 2015 WL 8212827 (Fla. Dec. 1, 2015).
[44] 2012-01 Fla. Op. Att'y Gen. (2012).
[45] *See* Mary Ellen Klas, *Attorney General Opinion Puts Reins on Slots at Gretna Barrel Racing Track*, Miami Herald (Jan. 12, 2012), http://www.miamiherald.typepad.com/nakedpolitics/2012/01/attorney-general-opinion-puts-reins-on-gretna-barrel-racing-.html.
[46] *See supra* note 34.
[47] *See* s. 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").

- To offer intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing as defined in ch. 550 and meet other requirements.[48]
- To remain 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.[49]
- To remain eligible for a slot machine license, permitholders must conduct a full schedule of live racing as defined in ch. 550.[50]

Indian Gaming

Background on Indian Gaming Law

Gambling on Indian lands is subject to federal law, with limited state involvement. The Indian Gaming and Regulatory Act (IGRA), codified at 25 USC §§ 2701-2721, was enacted in 1988 in response to the United State Supreme Court decision in California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987). The act provides for "a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between tribes and States for regulation of class III gaming."[51] In so doing, IGRA seeks to balance the competing interests of two sovereigns: the interests of the Tribe in engaging in economic activities for the benefit of its members and the interest of the state in either prohibiting or regulating gaming activities within its borders.[52]

IGRA separates gaming activities into three categories:

- Class I games are "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations."[53] Class I games are within the exclusive jurisdiction of the Indian tribes.[54]
- Class II games are bingo and card games that are explicitly authorized or are not explicitly prohibited by the laws of the State.[55] The tribes may offer Class II card games "only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games." Class II gaming does not include "any banking card games, including baccarat, chemin de fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind."[56] Class II games are also within the jurisdiction of the Indian tribes, but are also subject to the provisions of IGRA.[57]
- Class III games are defined as any games that are not Class I or Class II. Class III games include slot machine and banked card games such as blackjack, baccarat and chemin de fir.[58]

A tribe can qualify to offer Class III games in the following ways:

- If the state authorizes Class III games for any purpose to any person, organization, or entity, the tribe must:

[48] *See* s. 550.615, F.S.
[49] s. 849.086(5)(b), F.S.
[50] s. 551.104(4)(c), F.S.
[51] United States Senate Report No. 100-446, Aug. 3, 1988.
[52] *Id.*
[53] 25 U.S.C. 2703(6).
[54] 25 U.S.C. 2710(a)(1).
[55] 25 U.S.C. 2703(7)(A).
[56] 25 U.S.C. 2703(7)(B).
[57] 25 U.S.C. 2710(a)(2) and (b).
[58] 25 U.S.C. 2703; 25 C.F.R. § 502.4.

    - Authorize the games by an ordinance or resolution adopted by the governing body of the Indian tribe, approved by the Chairman of the National Indian Gaming Commission, and in compliance with IGRA; and
    - Conduct the games in conformance with a Tribal-State compact entered into between the tribe and the State.[59]

- If the state does NOT authorize Class III gaming for any purpose by any person, organization, or entity, the tribe must request negotiations for a tribal-state compact governing gaming activities on tribal lands. Upon receiving such a request, the state may be obligated to negotiate with the Indian tribe in good faith.[60] Under IGRA, a tribe is not entitled to a compact.

When the negotiations fail to produce a compact, a tribe may file suit against the state in federal court and seek a determination of whether the state negotiated in good faith. If the court finds the state negotiated in good faith, the tribe's proposal fails. On a finding of lack of good faith, however, the court may order negotiation, then mediation. If the state ultimately rejects a court-appointed mediator's proposal, the Secretary "shall prescribe, in consultation with the Indian tribe, procedures... under which class III gaming may be conducted."[61]

Generally, in accordance with IGRA, a compact may include the following provisions:

- The application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of gaming;
- The allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of laws and regulations;
- An assessment in an amount necessary to defray the costs of regulation;
- Revenue sharing by the Indian tribe for permitted activities;
- Remedies for breach of contract;
- Standards for the operation of gaming and gaming facilities, including licensing; and
- Any other subjects that are directly related to the operation of gaming activities.[62]

Any compact that is entered into by a tribe and a state will take effect when approval by the Secretary of the Interior is published in the Federal Register.[63] Upon receipt of a proposed compact, the Secretary has 45 days to approve or disapprove the compact.[64] A compact will be considered approved if the Secretary fails to act within the 45-day period. A compact that has not been validly "entered into" by a state and a tribe, e.g. execution of a compact by a state officer who lacks the authority to bind the state, cannot be put "into effect", even if the Secretary of the Interior publishes the compact in the Federal Register.[65]

There is no explicit provision under IGRA that requires Indian Gaming revenue sharing between a tribe and a state or any of its political subdivisions. IGRA specifically states:

> [N]othing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage

[59] 25 U.S.C. 2710(d)(1).
[60] 25 U.S.C. 2710 (d)(3)(A).
[61] 25 U.S.C. 2710(d)(7). This option is addressed in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), which brought into question whether a tribe has the ability to enforce the provisions of IGRA against a state. The Department of Interior adopted rules to provide a remedy for the tribes. The validity of the rules were also brought into question in *Texas v. United States*, 497 F.3d 491, (5th Cir. 2007).
[62] 25 U.S.C. 2710 (d)(3)(C).
[63] 25 U.S.C. 2710(d)(3)(B).
[64] 25 U.S.C. 2710(d)(8)(C).
[65] *See Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir. 1997).

> in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3) (A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.[66]

Notwithstanding this restriction, revenue sharing is permissible so long as the tribe receives a valuable economic benefit in return. Typically, such benefit is in the form of substantial exclusivity in game offerings, geographic monopoly and/or a right to conduct such offerings on more favorable terms than non-Indians.[67]

The 2010 Compact

The Tribe and the State executed the 2010 Compact on April 7, 2010, which was ratified through Chapter 285, F.S. The 2010 Compact took effect when published in the Federal Register on July 6, 2010 and all but the banked card game authorization has a term of 20 years, expiring July 31, 2030, unless renewed.

The 2010 Compact provides for revenue sharing from the Tribe to the State. For the exclusive authority to offer banked card games on tribal lands at five locations for five years and to offer slot machine gaming outside Miami-Dade and Broward Counties, the Tribe pays the State a share of "net win" (currently, revenue sharing payments equal approximately $120 million per year). The 2010 Compact required the Tribe to share revenue with the State in the amount of $1 billion over the first five years.

Section 285.710(1)(f), F.S., designates the Division within DBPR as the "state compliance agency" responsible for carrying out the state's oversight responsibilities under the 2010 Compact.

The State of Florida retains the right to authorize or prohibit gaming in the state. However, the 2010 Compact provides consequences for the expansion of gaming:

- 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.[68]

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.

Compact Litigation

In 2015, when the Tribe's authorization to conduct banked card games was scheduled to expire, the Tribe and DBPR filed lawsuits against each other. In its lawsuit, the Tribe asserted that the State allowed pari-mutuel facilities to conduct designated player games and, as a result, the Tribe is entitled

[66] 25 U.S.C. 2710(d)(4).
[67] *See generally In re Indian Gaming Related Cases*, 331 F.3d 1094 (9th Cir. 2003)(upholding revenue sharing where revenues were apportioned to non-gaming tribes); *see also* Letter From Gale A. Norton, Secretary of the Department of Interior, to Cyrus Schindler, President of the Seneca Nation of Indians, November 12, 2002.
[68] The Tribe would automatically be authorized to conduct the same games authorized for any other person at any location.

to conduct banked card games for the full 20-year term of the 2010 Compact. The Tribe also asserted that the State breached its duty to negotiate with the Tribe in good faith. In its lawsuit, DBPR asserted that the Tribe was improperly continuing banked card games beyond its 5-year authorization, and that the Tribe was violating IGRA by conducting gaming not otherwise authorized in the state.

In November 2016, a federal district court entered an order declaring that, due to DBPR's authorization of designated player games at pari-mutuel facilities, the Tribe has the right under the 2010 Compact to continue offering banked card games for the 2010 Compact's entire 20-year term and at all seven tribal facilities. [69] The ruling is currently under appeal.

2015 Proposed Compact

A new compact was executed by the Governor and the Tribe on December 7, 2015 (2015 Proposed Compact), but it has not been ratified by the Legislature and therefore is not in effect. Consequently, the 2010 Compact remains in effect.

Effect of the Bill: Seminole Gaming Compact

Indian Gaming in Florida

Ratification of the 2017 Compact

The bill ratifies and approves in advance a 2017 Compact between the Tribe and the State of Florida and authorizes the Governor to execute such a compact in the identical form set forth in the legislation. If ratified, the 2017 Compact will supersede the 2010 Compact; if not ratified, the 2010 Compact will remain in effect. As in previous compact legislation, the bill requires the Governor to cooperate with the Tribe in seeking approval of the 2017 Compact from the United States Secretary of the Interior.

Obligations under the 2017 Compact

The 2017 Compact authorizes the Tribe to conduct the same Class III games at the same locations originally authorized under the 2010 Compact.

It permits the Tribe to offer the following games, termed "covered games:"

- Slot machines at all 7 facilities;
- Banked card games (including blackjack, chemin de fer, and baccarat) at 5 of 7 facilities;
- Raffles and drawings;
- Any new game expressly authorized by the Legislature pursuant to legislation enacted subsequent to the effective date of the 2017 Compact game conducted by any authorized person for any authorized purpose, with an exception for certain banked card games.

It provides that "[a]ny of the facilities existing on Indian Lands… may be expanded or replaced by another facility on the same Indian Lands with at least 60 days advanced notice to the state."

The 2017 Compact has a term of 20 years.

Payments to the State under the 2017 Compact

Mirroring the 2015 Proposed Compact, the 2017 Compact establishes a guarantee minimum payment period that is defined as the seven-year period beginning July 1, 2017, and ending June 30, 2024. During the guarantee minimum payment period, the Tribe will make payments as specified, totaling $3 billion over seven years. Payments will be paid by the Tribe to the State as follows:

[69] *Seminole Tribe of Florida v. State of Florida*, No. 4:15CV516-RH/CAS, 2016 WL 6637706 (N.D. Fla. Nov. 9, 2016).

- During the initial period (from the effective date to June 30, 2017), the Tribe makes payments based on a variable percentage of net win similar to the percentage payments in the 2010 Compact.
- During the guarantee minimum payment period from July 1, 2017 to June 30, 2024, the Tribe pays a minimum of $3 billion over seven years.
- At the end of the guarantee minimum payment period, if the percentage payments (that range from 13 percent of net win up to $2 billion, to 25 percent of net win greater than $4.5 billion) would have amounted to more than the guaranteed minimum payments, the Tribe must pay the difference.
- The Tribe's guaranteed minimum revenue sharing payments are:

    - $325 million – 1st year;
    - $350 million – 2nd year;
    - $375 million – 3rd year;
    - $425 million – 4th year;
    - $475 million – 5th year;
    - $500 million – 6th year; and
    - $550 million – 7th year.

- After the first seven years, the Tribe will continue to make percentage payments to the state without a guaranteed minimum payment.
- The percentage payments include 13 percent on amounts up to $2 billion of net win[70], 17.5 percent on amounts greater than $2 billion, up to and including $3.5 billion of net win[71], 20 percent of amounts greater than $3.5 billion, up to and including $4 billion of net win, 22.5 percent of amounts greater than $4 billion, up to and including $4.5 billion of net win, and 25 percent of amounts greater than $4.5 billion of net win.

Revenue Sharing Consequences under the 2017 Compact

The 2017 Compact specifies that the monies paid by the Tribe to the State shall be allocated as follows:

- Three percent shall be distributed to local governments affected by the Tribe's operation of covered games;
- Of the remaining amounts:
    - One-third shall be allocated to K-12 teacher recruitment and retention bonuses;
    - One-third shall be allocated to schools that serve students from persistently failing schools; and
    - One-third shall be allocated to higher education institutions to recruit and retain distinguished faculty.

If such payments are not allocated to the specified educational purposes in the precise manner and amounts set forth above, then all further payments due to the State will cease until such time as such allocations are made, in which event the payments will resume.

As with the 2010 Compact, revenue sharing payments under the 2017 Compact may be affected if the State permits:

- New forms of Class III gaming or other casino-style gaming after February 1, 2017, or Class III gaming or other casino-style gaming at any location not authorized for such games as of February 1, 2017;
- Licensed pari-mutuel wagering entities to offer banked card games;

[70] One percentage point more than the 2010 Compact.
[71] Two and a half percentage points more than the 2010 Compact for amounts between $2 billion and $3 billion of net win.

- Class III gaming at other locations in Miami-Dade or Broward counties;
- Class III gaming to be offered outside of Miami-Dade or Broward counties.

As with the 2010 Compact, revenue sharing under the 2017 Compact may also be affected if the State authorizes any new types of lottery games for the Florida Lottery that are not in operation as of February 1, 2017. Likewise, it recognizes that internet gaming is not currently permitted in Florida. If the Legislature authorizes internet gaming, the guaranteed minimum payments cease, but the percentage payments continue. If the Tribe offers internet gaming to patrons, then the guaranteed minimum payments continue.

In addition, the 2017 Compact:

- Specifies that revenue sharing payments may be affected if the State permits any pari-mutuel to reduce live races below levels required under current law for a pari-mutuel facility to maintain cardroom and slot machine licenses.
- Establishes a more detailed process for identifying and resolving any breaches of exclusivity under the Compact.

As the table below illustrates, the 2017 Compact adopts many of the key provisions of the 2010 Compact:

	2010 Compact	**2017 Compact**
Revenue Sharing	Revenue sharing, providing for minimum guaranteed payments of $1 billion dollars over the first five years. (The minimum guaranteed payments ended on July 1, 2015)	Revenue sharing, providing for minimum guaranteed payments of $3 billion dollars over the first seven years.
Compulsive Gambling Exclusivity Payment	Tribe will make annual $250,000 donation per Facility ($1,750,000 total) to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list, so long as exclusivity is maintained.	Same.
Class III Gaming Authorizations	All seven Seminole Casinos may offer slot machines, raffles and drawings, and any new game authorized in Florida. Banked card games may be offered at five of the Seminole Casinos (excluding the Brighton and Big Cypress facilities).	Same.
Banked Card Game Exclusivity	No facility in Florida, except for specifically authorized Tribal facilities, may offer banked card games.	Same.
Slot Machine Exclusivity	No facility except for currently authorized PMW facilities in Miami-Dade or Broward County may offer slot machines.	Same.
If Class III Gaming is authorized in non-specified facilities <u>within</u>	Guaranteed minimum payments cease and revenue sharing payments are calculated excluding Broward County facilities.	Same.

Miami-Dade or Broward County		
If Class III Gaming is authorized <u>outside</u> of Miami-Dade or Broward County	All payments under the Compact cease.	Same.
If internet or online gaming is authorized in Florida	If Tribe's revenues drop by more than 5%, guaranteed minimum payments stop but percentage revenue sharing continues. If Tribe decides to offer internet or online gaming, then guaranteed minimum payments continue.	Same.

<u>Effect of the Bill: Pari-Mutuel Wagering</u>

The bill specifies that the Division may not approve or issue any new permit authorizing pari-mutuel wagering. The bill also provides that any reduction in live performances by a pari-mutuel facility may affect revenue sharing payments under the Compact.

The bill provides additional authority for the Division to revoke a permit, including in the following circumstances:

- If a permitholder has failed to obtain an operating license to conduct live events for a period of more than 24 consecutive months after July 1, 2012.
- If a permitholder fails to make required payments for more than 24 consecutive months. This extends the existing requirement relative to thoroughbred and harness racing permits to all pari-mutuel wagering permits.

In addition, the bill:

- Specifies that pari-mutuel permits revoked under the situations identified above are void and may not be reissued.
- Repeals all relocation provisions relating to pari-mutuel permits.
- Repeals all conversion provisions relating to pari-mutuel permits.

<u>Effect of the Bill: Cardrooms</u>

Cardrooms in Florida

The bill revises provisions to clarify that only traditional, pari-mutuel style poker games are authorized in cardrooms in Florida. The bill also specifies that designated player games and any other form of card game involving a bank are prohibited in cardrooms.

The bill revises the statutory definition of "authorized game" as follows:

> [A] game or series of games of traditional poker or dominoes which are played in a pari-mutuel, nonbanking manner, where all players at the table play against all other players at the table and contribute to a common pot of winnings collected by the winner, and which are played in a manner consistent with the rules and requirements set forth in the 1974 edition of Hoyle's Modern Encyclopedia of Card Games.

The bill revises the statutory definition of "banking game" to be “a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers, or a game in which any person or party serves as a bank against which participants play.”

The bill prohibits any game not specifically authorized by the statute, including but not limited to games in which:

- The cardroom or any other person or party serves as a bank or banker against which players play;
- Players compete against a designated player instead of competing against all players at the table;
- The number of cards or ranking of hands does not conform to the rules and requirements for traditional poker as set forth in the 1974 edition of Hoyle's Modern Encyclopedia of Card Games; or
- Any other game conducted in a manner that is not consistent with the statutes.

Finally, the bill states that any action or inaction by the Division which is deemed to be permission to conduct banking games does not represent state action for purposes of the 2017 Compact.

Effect of the Bill: Slot Machines

Slot Machines in Florida

The bill clarifies that slot machines and slot machine licenses are not authorized in pari-mutuel facilities outside of Miami-Dade and Broward Counties, and further states that no new slot machine licenses may be issued after January 1, 2017. This clarification is accomplished in part by repealing the third clause of s. 551.102(4), which is the provision that caused litigation.

Under s. 551.102(4), F.S., slot machine-eligible facilities are defined to include:

- 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;
- Any licensed pari-mutuel facility located within a county as defined in s. 125.011, F.S., provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter; or
- Any licensed pari-mutuel facility in any other county in which a majority of 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 license fee, and meets the other requirements of this chapter.

To date, no facilities have obtained eligibility pursuant to the third clause. However, several pari-mutuels have relied upon that clause in requesting a slot machine license, which is currently the subject of pending litigation before the Florida Supreme Court and other courts.[72]

B. SECTION DIRECTORY:

Section 1 amends s. 285.710, F.S., ratifying and approving a Model Gaming Compact between the Tribe and the State (2017 Compact); providing that the 2017 Compact, once in effect, will replace and supersede the prior compact in effect since 2010 (2010 Compact); authorizing the Governor to negotiate and execute a compact identical to the 2017 Compact, and thereafter to cooperate with the Tribe in seeking approval of such compact from the United States Secretary of the Interior; maintaining

[72] *See supra* note 34.

exclusive authorization for the Tribe to conduct games but only to the extent previously authorized under the 2010 Compact and only at the specified facilities authorized to conduct such games as of July 1, 2015.

Section 2 amends s. 285.712, F.S., correcting a citation.

Section 3 amends s. 550.054, F.S., requiring the Division to revoke a pari-mutuel wagering operating permit under certain circumstances; prohibiting issuance or approval of new pari-mutuel permits after a specified date; providing exceptions; revising provisions that prohibit transfer or assignment of a pari-mutuel permit; prohibiting transfer or assignment of a pari-mutuel permit or license under certain conditions; prohibiting relocation of a pari-mutuel facility, cardroom, or slot machine facility or conversion of pari-mutuel permits to a different class; deleting provisions for certain converted permits.

Section 4 repeals s. 550.0555, F.S., relating to the relocation of greyhound racing permits.

Section 5 repeals s. 550.0745, F.S., relating to the issuance of pari-mutuel permits to summer jai alai permits under certain circumstances.

Section 6 amends s. 550.09512, F.S., providing for the revocation of certain harness horse racing permits; specifying that a revoked permit may not be reissued.

Section 7 amends s. 550.09515, F.S., providing for the revocation of certain thoroughbred racing permits; specifying that a revoked permit may not be reissued; removing an obsolete provision.

Section 8 amends s. 550.3345, F.S., revising provisions for a permit previously converted from a quarter horse racing permit to a limited thoroughbred racing permit.

Section 9 amends s. 551.102, F.S., revising the definition of the terms "eligible facility" for purposes of provisions relating to slot machines.

Section 10 amends s. 551.104, F.S., specifying that no new slot machine licenses may be issued by the Division after January 1, 2017; specifying that no slot machine gaming may be conducted at any location or facility not conducting slot machine gaming as of January 1, 2017.

Section 11 amends s. 849.086, F.S., revising definitions; clarifying that Division may not authorize designated player games or any game involving a bank in cardrooms; authorizing the Division to revoke the cardroom license of any permitholder which conducts games prohibited under s. 849.086(12), F.S.

Section 12 clarifies that all cardroom games involving designated players or a bank of any kind are illegal, prohibited, and contrary to the plain language and spirit of Florida law.

Section 13 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill is expected to have a positive recurring impact on state revenues. However, the Revenue Estimating Conference has not estimated the potential revenue impacts of the bill.

2. Expenditures:

Unknown. DBPR has not provided an estimate of any operational/fiscal impact that the bill may have on the Division or DBPR.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill is expected to have a positive recurring impact on local government revenues due to the 3 percent distribution from revenues shared with the state. However, the Revenue Estimating Conference has not estimated the potential revenue impacts of the bill.

2. Expenditures:

The bill does not appear to have an impact on expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

The bill includes provisions that may result in the revocation or restriction of pari-mutuel permits and associated licenses. The bill may also result in the restriction of activities currently being conducted or requested to be conducted at one or more pari-mutuel facilities. Affected permitholders may claim that such provisions offend constitutional protections.

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 … ."[73] Thus, the 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."[74] Likewise, "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right."[75]

Furthermore, it is unclear what (if any) value can be attributed to a pari-mutuel permit. Pari-mutuel permits are merely a prerequisite to licensure for pari-mutuel wagering and, by themselves, do not appear to vest the holder with any constitutionally protected 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 permit is one prerequisite to licensure to conduct cardrooms and slot machines, it is not the only prerequisite. Not all permitholders may be able to obtain a license to conduct pari-mutuel wagering events or other gaming activities, which may

[73] *Hialeah Race Course v. Gulfstream Park Racing Ass'n*, 37 So.2d 692, 694 (Fla. 1948).
[74] *State ex rel. Biscayne Kennel Club v. Stein*, 130 Fla. 517, 520 (Fla. 1938).
[75] *Solimena v. State*, 402 So.2d 1240 (Fla. 3rd DCA 1981).

require local zoning and other approvals. In other words, a pari-mutuel permit alone has little (if any) value in the absence of the many other licenses and other governmental approvals that are required to conduct the activities associated with the pari-mutuel permit.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES