HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 3A Gaming Enforcement
SPONSOR(S): Select Committee on Gaming, Rommel
TIED BILLS: CS/CS/HB 1A, HB 5A **IDEN./SIM. BILLS:** CS/SB 4-A

FINAL HOUSE FLOOR ACTION: 108 **Y's** 7 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 3A passed the House on May 19, 2021, as SB 4-A

In general, gambling is illegal in Florida. However, certain gaming activities are authorized by law and regulated by the state, including the state lottery, pari-mutuel wagering at licensed greyhound and horse tracks and jai alai frontons, slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade and Broward County, cardrooms at certain pari-mutuel facilities, penny-ante games, bingo, and charitable drawings.

In Florida, the investigation of illegal gambling is handled by law enforcement officers (as opposed to regulators). In the absence of an overarching state gaming regulatory authority, local or county law enforcement and prosecutors are assigned such matters. For example, the Department of Business and Professional Regulation (DBPR), Division of Pari-Mutuel Wagering does not have authority over illegal gaming. As a result, the prosecution of such matters is normally referred to the county or local prosecuting authority.

The bill creates the Florida Gaming Control Commission (Commission) and the Division of Gaming Enforcement (DGE) within the Commission. The bill establishes additional enforcement measures to address violations of gambling laws and the conduct of unauthorized gaming in the state, including providing that the DGE is a law enforcement agency and granting additional investigative and prosecutorial authority to the Office of Statewide Prosecution in the Department of Legal Affairs (DLA).

The bill establishes requirements and standards for the Commission and its employees, including:

- Creating conflict of interest and ethics requirements for commissioners and Commission employees.
- Creating requirements to serve on or be employed by the Commission.
- Requiring the Commission to annually recertify pari-mutuel operating licensees.
- Providing DGE inspection and taxation authority, and the authority to seize illegal gaming contraband.
- Providing subpoena powers to the Commission.
- Requiring the Commission to:
    - ensure the gaming laws of Florida are not interpreted to allow unlawful gaming;
    - review the Seminole Tribal Gaming Commission's regulations for sports betting;
    - evaluate information relating sports betting that may affect the integrity of a sports event; and
    - refer criminal violations to the Office of Statewide Prosecution or the appropriate state attorney.

Effective July 1, 2022, the bill:

- Designates the Commission as the state compliance agency over gaming compacts;
- Provides for a type two transfer from DBPR to the Commission, of the regulation for pari-mutuel wagering, cardroom, and slot machine licensees; and
- Transfers the Pari-mutuel Wagering Trust Fund from DBPR to the Commission.

For Fiscal Year 2021-22, the bill appropriates a nonrecurring sum of $2,000,000 from the General Revenue Fund and authorizes 15 positions with associated salary rate of $1,250,000 to the Commission to implement the bill. For Fiscal Year 2021-22, the bill appropriates a nonrecurring sum of $100,000 to DBPR from the General Revenue Fund to provide administrative support to the Commission during the 2021-22 Fiscal year.

The bill was approved by the Governor on May 25, 2021, and will become effective on the same date that SB 2-A or similar legislation takes effect except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

General Overview of Gaming in Florida

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

However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[1] wagering at licensed greyhound and horse tracks, and jai alai frontons;[2]
- Gaming on tribal reservations in accordance with the Indian Gaming and Regulatory Act and the 2010 Gaming Compact with the Seminole Tribe of Florida;
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[3] and
- Cardrooms[4] at certain pari-mutuel facilities.[5]

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[6] bingo,[7] charitable drawings,[8] game promotions (sweepstakes),[9] and bowling tournaments.[10] Section 546.10, F.S., authorizes skill-based amusement games and machines at specified locations.

Lotteries

Article X, section 7 of the 1968 Florida 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]

In order 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, charitable drawings, and game promotions. Charities use drawings or raffles as a fundraising tool. Organizations suggest a donation, collect entries, and randomly select an entry to win a prize.

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[1] "Pari-mutuel" is defined in Florida law 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. *See* s. 550.002(22), F.S.

[2] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.

[3] *See* art. X, s. 23, Fla. Const. and ch. 551, F.S.

[4] S. 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 charged a fee for participation by the operator of such facility."

[5] The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2021-2022 Operating Licenses to operate 27 cardrooms. *See* http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 7, 2021).

[6] S. 849.085, F.S.

[7] S. 849.0931, 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. 849.141, 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 new state constitution was ratified by the electorate on November 5, 1968.

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.[12]

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.[13] Article X, section 15 of the Florida Constitution (adopted by the electors in 1986) 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 Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.

Amendment to Florida Constitution Related to Expansion of Gambling – "Voter Control of Gambling in Florida"

During the 2018 General Election, the electorate approved an initiative constitutional amendment – Amendment 3, "Voter Control of Gambling in Florida". The amendment is codified in the Florida Constitution as article X, section 30.[14]

Summary of Amendment 3

The amendment requires a vote proposed by citizen's initiative to amend the Florida Constitution to authorize "casino gambling" in Florida.

Casino gambling is defined as:

- Any of the "types of games typically found in casinos" and that are:
  - Within the definition of Class III gaming in:
    - The Federal Indian Gaming Regulatory Act[15], and
    - 25 C.F.R. § 502.4.

Casino gambling includes but is not limited to the following:

- Any house banking game, including but not limited to card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);
- Any player-banked game that simulates a house banking game, such as California blackjack;
- Casino games such as roulette, craps, and keno;
- Any slot machines as defined in 15 U.S.C. 1171(a)(1); and
- Any other game not authorized by Article X, section 15 of the Florida Constitution, relating to state operated lotteries, whether or not defined as a slot machine, in which outcomes are determined by random number generator or are similarly assigned randomly, such as instant or historical racing.

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[12] *Little River Theatre Corp v. State*, 185 So. 854, 868 (Fla. 1939).
[13] The Department of the Lottery is authorized by Article X, section 15 of the 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.
[14] See the text of Amendment 3, now codified as art. X, s. 30, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes&CFID=44933245&CFTOKEN=f39b1ca7cab71561-BE329BC7-5056-B837-1A6123F335C4849F#A10S30 (last visited Apr. 7, 2021).
[15] 25 U.S.C. 2701 et seq.

"Casino gambling" is defined to include the following devices:

- Any electronic gambling devices;
- Simulated gambling devices;
- Video lottery devices;
- Internet sweepstakes devices; and
- Any other form of electronic or electromechanical facsimiles of any game of chance, slot machine, or casino-style game, regardless of how such devices are defined under the Indian Gaming Regulatory Act.

"Casino gambling" does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions.

By its terms, the Amendment became effective on November 6, 2018, is self-executing, and no legislative implementation is required.

Indian Gaming and Regulatory Act

Gambling on Indian lands is subject to federal law, with limited state involvement. The Indian Gaming and Regulatory Act (IGRA), codified at 25 USCA §§ 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."[16] 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.[17]

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."[18] Class I games are within the exclusive jurisdiction of the Indian tribes.[19]
- **Class II games** are bingo and card games that are explicitly authorized or are not explicitly prohibited by the laws of the state.[20] 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."[21] Class II games are also within the jurisdiction of the Indian tribes, but are also subject to the provisions of IGRA.[22]
- **Class III games** are defined as any games that are not Class I or Class II. Class III games include slot machines and banked card games such as blackjack, baccarat and chemin de fir.[23]

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:

[16] United States Senate Report No. 100-446, Aug. 3, 1988.
[17] *Id.*
[18] 25 U.S.C. 2703(6).
[19] 25 U.S.C. 2710(a)(1).
[20] 25 U.S.C. 2703(7)(A).
[21] 25 U.S.C. 2703(7)(B).
[22] 25 U.S.C. 2710(a)(2) and (b).
[23] 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.[24]
- 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.[25] Under IGRA, a tribe is not entitled to a compact.

The tribe and the state are required to negotiate in good faith. Federal courts have jurisdiction to hear a claim by a tribe that the state has failed to negotiate in good faith. However, tribes cannot sue states that refuse to negotiate or fail to negotiate in good faith unless states waive their sovereign immunity.[26]

If negotiations fail to produce a compact and the state has waived its sovereign immunity, 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 by the state, however, the court may order negotiation, followed by mandatory 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."[27]

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;
- 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.[28]

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.[29] Upon receipt of a proposed compact, the Secretary has 45 days to approve or disapprove the compact.[30] 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.[31]

There is no explicit provision under IGRA that authorizes revenue sharing. IGRA specifically states:

> Nothing 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

[24] 25 U.S.C. 2710(d)(1).
[25] 25 U.S.C. 2710 (d)(3)(A).
[26] 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 judicially enforce the provisions of IGRA against a state. The Department of the Interior adopted rules to provide a remedy for the tribes. The validity of the rules were brought into question in *Texas v. United States*, 497 F.3d 491, (5th Cir. 2007).
[27] *Id.*
[28] 25 U.S.C. 2710 (d)(3)(C).
[29] 25 U.S.C. 2710(d)(3)(B).
[30] 25 U.S.C. 2710(d)(8)(C).
[31] *See Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir. 1997).

tribe or upon any other person or entity authorized by an Indian tribe to engage 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.[32]

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.[33]

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." Revenue sharing payments were approximately $240 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 of Pari-Mutuel Wagering (Division) within the Department of Business and Professional Regulation (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.[34]

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.

Starting in July 2015, DBPR and the Seminole Tribe engaged in litigation over the conduct of "designated player" card games at pari-mutuel facilities.

[32] 25 U.S.C. 2710(d)(4).

[33] *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 the Interior, to Cyrus Schindler, President of the Seneca Nation of Indians, November 12, 2002.

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

On November 9, 2016, a federal court ruled that the state had violated the terms of the Compact and the Tribe was entitled to continue offering banked card games beyond the initial 5-year blackjack authorization and may continue offering such games for the entire 20-year term of the Compact (expiring July 2030). The Tribe continued to make full revenue sharing payments to the state throughout the course of the litigation. The parties did not raise, and consequently the ruling did not address, the future revenue sharing obligations of the Tribe.

The parties subsequently executed a settlement agreement in July 2017, which was extended in April 2018. Under the settlement agreement, the Tribe agreed to continue revenue sharing payments provided that DBPR "aggressively enforced" the statutory ban on banking card games.

In April 2019 the Tribe stopped revenue sharing payments to the state because the Tribe believed that aggressive enforcement had not occurred.

Regulation of Pari-mutuel Wagering

Since approximately 1931, pari-mutuel wagering has been authorized in Florida for jai alai, greyhound racing, and horseracing. These activities are overseen and regulated by the Division.[35] A license to offer pari-mutuel wagering, slot machine gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[36] 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.[37]

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."[38]

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.

Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities.[39] Certain permitholders are also authorized to operate cardrooms[40] and slot machines at their facility, as discussed further below.[41]

According to the Division's Annual Report, in the 2019-2020 Fiscal Year there were 50 pari-mutuel wagering permits, and 5 non-wagering permits. There were 38 pari-mutuel permitholders licensed to operate during Fiscal Year 2019-2020, in addition to one thoroughbred sales facility that holds a limited license to conduct intertrack wagering. There were eight pari-mutuel facilities licensed to operate slot machines. Several locations have multiple permits that operate at a single facility. Chapter 550, F.S.,

[35] Department of Business and Professional Regulation, *Pari-mutuel Wagering – Permitholder Operating Licenses 2021-2022*, http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 7, 2021).
[36] *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, 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). *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."
[37] 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, which, in 1993, became DBPR.
[38] S. 550.002(22), F.S.
[39] S. 550.0115, F.S.
[40] S. 849.086, F.S.
[41] S. 551.104, F.S.

specifies circumstances under which certain pari-mutuel permits may be revoked, relocated, or converted.

According to the Division's Annual Report, in the 2019-2020 Fiscal Year the following types of permits were licensed to operate:

- Nineteen Greyhound Racing permits
- Five Thoroughbred Horse Racing permits
- One Harness Horse Racing permit
- Five Quarter Horse Racing permits
- Eight 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. To offer intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing and meet other requirements.[42]

According to the Division, ten permitholders were not issued operating licenses for Fiscal Year 2020-2021: two greyhound permitholders,[43] two jai alai permitholders,[44] one limited thoroughbred permitholder,[45] and five quarter horse permitholders.[46] There were eight license suspensions, and $19,075 in fines assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2019-2020.[47]

Issuance of Pari-mutuel Permits and Annual Licenses

Section 550.054, F.S., provides that any person meeting the qualification requirements of ch. 550, F.S., may apply to the Division for a permit to conduct pari-mutuel wagering. Upon approval, a permit must be issued to the applicant that indicates:

- The name of the permitholder;
- The location of the pari-mutuel facility;
- The type of pari-mutuel activity to be conducted; and
- A statement showing qualifications of the applicant to conduct pari-mutuel performances under ch. 550, F.S.

A permit does not authorize any pari-mutuel performances until approved by a majority of voters in a ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. An application may not be considered, nor may a permit be issued by the Division or be voted upon in any county, for the conduct of:

- Harness horse racing, quarter horse racing, thoroughbred horse racing, or greyhound racing at a location within 100 miles of an existing pari-mutuel facility; or
- Jai alai games within 50 miles of an existing pari-mutuel facility.[48]

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[42] *See* s. 550.615, F.S.
[43] Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).
[44] Gadsden Jai-alai (Chattahoochee) and Tampa Jai Alai.
[45] Under s. 550.3345, F.S., during Fiscal Year 2010-2011 only, holders of quarter horse racing permits were allowed to convert their permits to a thoroughbred racing permit, conditioned upon specific use of racing revenues for enhancement of thoroughbred purses and awards, promotion of the thoroughbred horse industry, and the care of retired thoroughbred horses. Two conversions occurred, Gulfstream Park Thoroughbred After Racing Program (GPTARP) (Hallandale, Broward County), which was licensed to operate in 2019-2020, and Ocala Thoroughbred Racing (Marion County), which was not licensed to operate.
[46] ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), and St. Johns Racing (St. Johns County). *See* http://www.myfloridalicense.com/dbpr/pmw/documents/PermitholdersList_2020-2021.pdf (last visited Apr. 7, 2021).
[47] Department of Business and Professional Regulation Division of Pari-mutuel Wagering, *89th Annual Report for Fiscal Year 2019-2020*, AnnualReport-2019-2020--89th--20210224.pdf pg. 5, (last visited Apr. 7, 2021).
[48] S. 550.054(2), F.S.

Distances are measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.[49]

After issuance of the permit and a ratification election, the Division may issue an annual operating license for wagering at the specified location in a county, indicating the time, place, and number of days during which pari-mutuel operations may be conducted at the specified location.[50]

The Division may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of ch. 550, F.S., or any administrative rule adopted by the Division, and may impose a civil penalty against the permitholder or license up to $1,000 for each offense.[51]

Slot Machine Gaming Locations and Operations

Article, section 32 of the Florida Constitution, adopted pursuant to a 2004 initiative petition, authorized slot machines in licensed pari-mutuel facilities in Broward and Miami-Dade, if approved by county referendum. The voters in Broward and Miami-Dade counties approved slot machine gaming. Slot machine gaming in the state is limited to Broward and Miami-Dade counties, and as authorized by federal law, in the tribal gaming facilities of the Seminole Tribe.

Current law addresses slot machine gaming operations as follows:

- Restricts the issuance of slot machine licenses to licensed pari-mutuel permitholders, for slot machine gaming only at the facility where pari-mutuel wagering is authorized to be conducted by the permitholder;[52]
- Limits slot machine gaming to 18 hours per day, Monday through Friday, and 24 hours on Saturdays and Sundays;[53] and
- Prohibits the service of complimentary or reduced-cost alcoholic beverages to persons playing a slot machine, among other prohibitions.[54]

Cardrooms

Section 849.086, F.S., authorizes cardrooms at certain pari-mutuel facilities.[55] In Fiscal Year 2021-2022, 27 cardrooms are licensed to operate.[56] A license to offer pari-mutuel wagering, slot machine gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[57] A cardroom may be open 18 hours per day on Monday through Friday, and 24 hours per day on Saturday and Sunday.[58]

Section 849.086(5) and (6), F.S., provide that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit may hold a cardroom license authorizing the operation of a cardroom and the conduct of authorized games at the cardroom. An authorized game is a game or series of games of

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[49] *Id.*
[50] S. 550.054(9)(a), F.S.
[51] S. 550.054(9)(b), F.S.
[52] S. 551.104(3), F.S.
[53] S. 551.116, F.S.
[54] S. 551.121, F.S.
[55] S. 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized 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.
[56] Department of Business and Professional Regulation, *Pari-mutuel Wagering – Permitholder Operating Licenses 2021-2022*, http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 7, 2021).
[57] *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, 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). *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."
[58] S. 849.086(7)(b), F.S.

poker or dominoes.[59] Such games must be played in a non-banking manner,[60] where the participants play against each other, instead of against the house (cardroom). At least four percent of the gross cardroom receipts of greyhound racing permitholders and jai alai permitholders conducting live races or games must supplement greyhound purses, and quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.[61]

Live Performance Requirements

Currently the state requires the following live performance requirements of pari-mutuel wagering permitholders:

- To offer intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing as defined in ch. 550, F.S., and meet other requirements.[62]
- To remain eligible for a cardroom license, permitholders must conduct at least 90 percent 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.[63]
- To remain eligible for a slot machine license, permitholders must conduct a full schedule of live racing as defined in ch. 550, F.S.[64]

Amendment to Florida Constitution Prohibiting Racing of and Wagering on Greyhounds or Other Dogs

During the 2018 General Election, the voters approved an initiative constitutional amendment, Amendment 13, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs, which has been codified in the Florida Constitution as article X, section 32.[65]

Article X, section 32 states:

> Prohibition on racing of and wagering on greyhounds or other dogs.—The humane treatment of animals is a fundamental value of the people of the State of Florida. After December 31, 2020, a person authorized to conduct gaming or pari-mutuel operations may not race greyhounds or any member of the *Canis Familiaris* subspecies in connection with any wager for money or any other thing of value in this state, and persons in this state may not wager money or any other thing of value on the outcome of a live dog race occurring in this state. The failure to conduct greyhound racing or wagering on greyhound racing after December 31, 2018, does not constitute grounds to revoke or deny renewal of other related gaming licenses held by a person who is a licensed greyhound permitholder on January 1, 2018, and does not affect the eligibility of such permitholder, or such permitholder's facility, to conduct other pari-mutuel activities authorized by general law. By general law, the legislature shall specify civil or criminal penalties for violations of this section and for activities that aid or abet violations of this section.

Thus, on January 1, 2019, greyhound tracks were permitted to discontinue live greyhound racing but could continue to operate other forms of gaming. As of January 1, 2021, wagering on live greyhound racing in Florida is completely prohibited. However, cardroom and slot machine facilities at the greyhound tracks may continue to operate after the closure of racing activities.

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[59] S. 849.086(2)(a), F.S.
[60] *Id.*
[61] S. 849.086(13)(d), F.S.
[62] S. 550.615, F.S.
[63] S. 849.086(5)(b), F.S.
[64] S. 551.104(4)(c), F.S.
[65] See the text of Amendment 13, now codified as art. X, s. 32, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S32 (last visited Apr. 11, 2021).

United States Gaming Regulatory Agencies (Gaming Commissions)

The National Council of Legislators from Gaming States (NCLGS) is an organization of state lawmakers which meets to discuss gaming issues, and includes committees on lotteries, pari-mutuels, casinos, responsible gaming, Indian gaming issues, and telephone/internet wagering.[66]

Other regulatory gaming associations in the United States include the:

- Association of Racing Commissioners International, Inc. (ARCI), a non-profit corporation founded in the 1930's to uphold uniform pari-mutuel racing rules and practice, serves as a resource for pari-mutuel rulings, including equine medication issues. The ARCI works to preserve the integrity of horseracing, jai-alai, and dog-racing.[67]
- North American Gaming Regulators Association (NAGRA), created in 1984, includes as members federal, state, local, tribal, and provincial government gaming regulators.[68]
- National Indian Gaming Commission (NIGC), established under the Indian Gaming Regulatory Act, is an independent federal regulatory agency charged with the regulation of Indian gaming on Indian land, specifically to protect tribes from corrupt influences, including organized crime, to make sure it is tribes that are receiving the benefit of Indian gaming, and to ensure that fair playing practices that protect tribes and players are adhered to. The NIGC maintains a list of gaming tribes on its site, searchable by tribe or state.[69]
- International Association of Gaming Regulators (IAGR), which is an organization of international government agencies responsible for the regulation of gaming in their home jurisdictions concerned with sharing information and resources among each other on issues relevant to the regulation of gaming.[70]

According to NAGRA, there are approximately 75 gaming regulatory agencies in the United States and Canada, including lottery commissions, pari-mutuel commissions, racing commissions, casino control commissions, and gambling control commissions.[71] Two of the most well-known gaming control entities are the Nevada Gaming Commission and Gaming Control Board,[72] and the New Jersey Casino Control Commission.[73]

In Nevada, members of the Board and Commission are appointed by the Governor of Nevada to four-year terms. In addition to other requirements, each member must be a resident of Nevada and no member may hold elective office while serving. Members are also not permitted to possess any direct pecuniary interest in gaming activities while serving in their capacity as members.[74]

The New Jersey Casino Control Commission is the independent licensing authority of the state's casinos and key employees, comprised of up to three members, appointed by the governor and confirmed by the state senate.[75] As a quasi-judicial panel, the commission conducts hearings on contested casino key employee license matters, and appeals from decisions and penalties imposed by the state's division of gaming enforcement. Commissioners serve staggered, five-year terms and may only be removed for cause.[76] The commission notes:

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[66] The National Council of Legislators from Gaming States, https://www.nclgs.org/index.php/about-us (last visited Apr. 7, 2021).
[67] Association of Racing Commissioners International, http://arci.com/ (last visited Apr. 7, 2021).
[68] North American Gaming Regulators Association, https://www.nagra.org/default.aspx (last visited Apr. 7, 2021).
[69] National Indian Gaming Commission, https://www.nigc.gov/ (last visited Apr. 7, 2021).
[70] International Association of Gaming Regulators https://www.iagr.org/ (last visited Apr. 10, 2021).
[71] See links to the numerous state and province gaming regulatory agencies, commissions, control boards, and lotteries at https://www.nagra.org/State-and-Province-Gaming-Regulatory-Agencies (last visited Apr. 7, 2021).
[72] Nevada Gaming Commission and Gaming Control Board, https://gaming.nv.gov/ (last visited Apr. 7, 2021).
[73] New Jersey Casino Control Commission, https://www.nj.gov/casinos/ (last visited Apr. 7, 2021).
[74] Nevada Gaming Control Board, *Information Packet*, https://gaming.nv.gov/index.aspx pg. 3, (last visited Apr. 7, 2021).
[75] New Jersey Casino Control Commission, *Overview*, https://www.nj.gov/casinos/about/overview/ (last visited Apr. 7, 2021
[76] *Id*.

- The success and ongoing viability of the gaming industry remains inextricably linked to the public's confidence that the State of New Jersey will ensure that people in the industry possess good character, honesty and integrity. Stewardship over that public confidence is a principal responsibility of the Commission and its Chairman.
- The Commission's regulatory efforts through the years have helped create an environment in which New Jersey's casinos can prosper and from which the citizens of New Jersey benefit. With proper regulatory controls, the industry serves as a catalyst to create economic benefits for Atlantic City, the Greater Atlantic City Region, and the entire State of New Jersey.[77]

Inspectors General

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency[78] to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Each agency OIG is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Providing central coordination of efforts to identify and remedy waste, abuse, and deficiencies to the agency head,[79] or the Chief Inspector General for agencies under the jurisdiction of the Governor; recommending corrective action concerning fraud, abuses, and deficiencies; and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.[80]

With respect to investigations, each OIG must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement,

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[77] *Id*.

[78] Section 20.055(1)(d), F.S., defines the term 'state agency' as each department created pursuant to ch. 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, the Office of Early Learning, and the state courts system.

[79] Section 20.055(1)(a), F.S., defines the term 'agency head' as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.

[80] S. 20.055(2), F.S.

misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate;
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law;
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information;
- At the conclusion of an investigation, the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report; and
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.[81]

Effect of the Bill

Department of Legal Affairs Office of Statewide Prosecution

The bill amends s. 16.56(1)(a), F.S., to authorize the Office of Statewide Prosecution in the Department of Legal Affairs, Office of the Attorney General (DLA) to investigate and prosecute any criminal violation of chs. 24, F.S., (State Lotteries), 285, part II, F.S., (Gaming Compact), 546, F.S., (Amusement Facilities), 550, F.S., (Pari-mutuel Wagering), 551, F.S., (Slot Machines), or 849, F.S., (Gambling including card rooms).

Florida Gaming Control Commission

The bill creates s. 16.71, F.S., to establish a Florida Gaming Control Commission (commission), within DLA. The commission is a separate budget entity and the commissioners serve as the agency head for all purposes. The commission is not subject to control, supervision, or direction by DLA.

The commission must convene at the call of the chair or at the request of a majority of its members. Three members of the commission constitute a quorum, and the affirmative vote of the majority of a quorum is required for any action or recommendation by the commission. However, the affirmative vote of three members is required to adopt a proposed rule, including an amendment to or repeal of an existing rule that meets or exceeds any of the criteria in s. 120.54(3)(b)1., F.S., or s. 120.541(2)(a), F.S. The commission may meet in any city or county of the state and meetings may be held via teleconference or other electronic means.

The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing must conform to state law.

The commission consists of five members, one from each appellate district, to be appointed by the Governor by January 1, 2022, for terms of four years, subject to Senate confirmation. When appointing members, the Governor must consider appointees who reflect Florida's racial, ethnic, and gender diversity. Of the five members:

[81] S. 20.055(7), F.S.

- At least one member must have at least 10 years of experience in law enforcement and criminal investigation.
- At least one member must be a certified public accountant licensed in this state with at least 10 years of experience in accounting and auditing.
- At least one member must be an attorney admitted and authorized to practice law in this state for at least the preceding 10 years.

The Governor is required to appoint one of the initial five members of the commission as the initial chair and one of the members as initial vice chair immediately upon their appointment. At the end of the initial chair's and vice chair's terms, the commission must elect one of its members as chair and one as vice chair.

After initial appointments to create staggered terms, all members will serve four year terms, but may not serve more than 12 years. The salary of a member is the same as a commissioner serving on the Public Service Commission (approximately $136,000 annually).

Persons Ineligible for Appointment to the Commission

A person who holds any office in a political party may not be appointed to the Commission.

A person is ineligible for appointment to the commission if they have been convicted or found guilty of, or has plead nolo contendere to, regardless of adjudication, in any jurisdiction:
- A felony or misdemeanor that directly relates to related to gambling, dishonesty, theft, or fraud within the 10 years immediately preceding such appointment; or
- A forcible felony or a sexual predator crime.

A person is also ineligible if they have had a permit or license issued under chapters 550, F.S., (Pari-mutuel Wagering), 551, F.S., (Slot Machines), 849, F.S., (Gambling) or a gaming license issued by any other jurisdiction that is denied, suspended, or revoked.

The Governor has the power to remove or suspend commissioners as set forth in article IV, section 7 of the Florida Constitution. In addition, the Governor must remove a member who is convicted of or found guilty of or has plead nolo contendere to, regardless of adjudication, in any jurisdiction, a misdemeanor that directly relates to gambling, dishonesty, theft, or fraud.

If a commissioner resigns or is removed, the Governor must appoint a successor who, subject to confirmation by the Senate, will serve the remainder of the unfinished term.

Commission Appointments

A person may not be appointed by the Governor to the commission until:
- A level 2 background investigation, pursuant to ch. 435, F.S, of the person is conducted by the Florida Department of Law Enforcement (FDLE);
- The investigation is forwarded to the Governor; and
- The Governor determines that the person meets all the requirements for appointment.

The Governor may not solicit or request any nominations, recommendations or communications about potential candidates for appointment to the commission from:
- Any person that holds a permit or license issued under chapters 550, F.S., (Pari-mutuel Wagering), 551, F.S., (Slot Machines), or 849, F.S., (Gambling), an officer, official, or employee of such permitholder or licensee, or an ultimate equitable owner, as defined in s. 550.002(37), F.S.,[82] of such permitholder or licensee.

[82] Section 550.002(37), F.S., defines the term "ultimate equitable owner" to mean "a natural person who, directly or indirectly, owns or controls 5 percent or more of an ownership interest in a corporation, foreign corporation, or alien business organization, regardless

- Any officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or an ultimate equitable owner of such entity.
- Any registered lobbyist for the executive or legislative branch that represents any person or entity identified above.

Commission Member and Employee Restrictions

For a period of 2 years immediately preceding appointment to, or employment with, the commission, and while appointed or employed with the commission, a person may not:

- Hold a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), or a license issued under ch. 551, F.S., (Slot Machines), ch. 546, F.S., (Amusement Facilities), or ch. 849, F.S., (Gambling); be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner of such permitholder or licensee;
- Be an officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; be a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or be an ultimate equitable owner of such entity;
- Be a registered lobbyist for the executive or legislative branch, except while a commissioner or employee of the commission when officially representing the commission; or
- Be a bingo game operator or employee of a bingo game operator.

Persons are ineligible for appointment to or employment with the commission if, within the 2 years immediately preceding such appointment or employment, they solicited or accepted employment with, acquired any direct or indirect interest in, or had any direct or indirect business association, partnership, or financial relationship with, or is a relative[83] of:

- Any person or entity who is an applicant, licensee, or registrant with the Division or the commission; or
- Any officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; or any contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe, or any ultimate equitable owner of such entity.

A person who is ineligible for employment with the commission due to being a relative of a person prohibited from being appointed to or employed by the commission, may submit a waiver request to the commission for the person to be considered eligible for employment. The commission must consider waiver requests on a case-by-case basis and must approve or deny each request. If the commission approves the request, the person is eligible for employment with the commission. This does not apply to anyone seeking appointment to the commission.

A person is ineligible for employment with the commission if he or she has been:

- Convicted of or found guilty of or pled nolo contendere to, regardless of adjudication, in any jurisdiction, of a felony within five years of the date of application;
- Convicted of or found guilty of or pled nolo contendere to, regardless of adjudication, in any jurisdiction, of a misdemeanor within five years of the date of application which the commission determines bears a close relationship to the duties and responsibilities of the position for which employment is sought; or

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of whether such person owns or controls such ownership through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof."

[83] The bill defines "relative" as a spouse, father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

- Dismissed from prior employment for gross misconduct or incompetence or if he or she intentionally made a false statement concerning a material fact in connection with his or her application to the commission.

If an employee of the commission is charged with a felony while employed by the commission, the commission must suspend the employee, with or without pay, and terminate employment with the commission upon conviction. If an employee of the commission is charged with a misdemeanor while employed by the commission, the commission must suspend the employee, with or without pay, and may terminate employment with the commission upon conviction if the commission determines that the offense bears a close relationship to the duties and responsibilities of the position held with the commission.

A commissioner or an employee of the commission must notify the commission within three calendar days after arrest for any offense. A commissioner or an employee must immediately provide detailed written notice of the circumstances to the commission if the member or employee is indicted, charged with, convicted of, pleads guilty or nolo contendere to, or forfeits bail for:

- A misdemeanor involving gambling, dishonesty, theft, or fraud;
- A violation of any law in any state, or a law of the United States or any other jurisdiction, involving gambling, dishonesty, theft, or fraud which would constitute a misdemeanor under the laws of this state; or
- A felony under the laws of this or any other state, the United States, or any other jurisdiction.

Division of Gaming Enforcement

The bill creates within the commission a Division of Gaming Enforcement (DGE), and requires the commissioners to appoint a director of the DGE who is qualified by training and experience in law enforcement or security to supervise, direct, coordinate, and administer all activities of the DGE. The DGE is considered a criminal justice agency within the definition of s. 943.045, F.S.[84]

The bill requires the director of the DGE and all investigators employed by the DGE to meet the requirements for employment and appointment provided by s. 943.13, F.S., and must be certified as law enforcement officers, as defined in s. 943.10(1).[85] The DGE director and investigators have the authority to detect, apprehend, and arrest for any alleged violation of chs. 24, F.S., (State Lotteries), 285, part II, F.S., (Gaming Compact), 546, F.S., (Amusement Facilities), 550, F.S., (Pari-mutuel Wagering), 551, F.S., (Slot Machines), or 849, F.S., (Gambling), or any rule adopted pursuant thereto, or any law of this state.

DGE law enforcement officers are authorized to enter upon any premises at which gaming activities are taking place in the state for the performance of their lawful duties and may take with them any necessary equipment. Such entry does not constitute a trespass.

In any instance in which there is reason to believe that a violation has occurred, DGE law enforcement officers have the authority, without warrant, to search and inspect any premises where the violation is

[84] Section 119.01(4), F.S., defines a "criminal justice agency" to mean any law enforcement agency, court, or prosecutor; any other agency charged by law with criminal law enforcement duties; any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or the Department of Corrections.

[85] Section 943.10(1), F.S., defines "law enforcement officer" to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

alleged to have occurred or is occurring, and may, consistent with the United States and Florida Constitutions, seize or take possession of any papers, records, tickets, currency, or other items related to any alleged violation.

Investigators employed by the commission also have access to, and have the right to inspect, premises licensed by the commission, to collect taxes and remit them to the officer entitled to them, and to examine the books and records of all persons licensed by the commission.

FDLE must provide assistance in obtaining criminal history information relevant to investigations required for honest, secure, and exemplary gaming operations, and provide other assistance as may be requested by the executive director of the commission and agreed to by the executive director of FDLE.

Any other state agency, including DBPR and the Department of Revenue (DOR), are required to, upon request, provide the commission with any information relevant to any investigation conducted pursuant to these provisions. The commission is required to reimburse any agency for the actual cost of providing any assistance.

Seizure of Contraband

The bill specifically provides the DGE and its investigators the authority to seize any contraband in accordance with the Florida Contraband Forfeiture Act. For purposes of this section, "contraband" has the same meaning as “contraband article” in s. 932.701(2)(a)2., F.S., which includes, any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.

The DGE is specifically authorized to store and test any contraband that is seized in accordance with the Florida Contraband Forfeiture Act.

The bill amends the definition of “contraband article” in s. 932.701(2)(a)2., F.S., to include any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, and Internet domain name which was obtained, received, used, attempted to be used or intended to be used in violation of the state’s gambling laws, including violations of ch. 24, F.S., (State Lotteries), ch. 285, part II, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling).

Commission Powers and Duties

By April 1, 2022, to aid the commission in its duties, the commission is required to appoint a person who is not a member of the commission to serve as the executive director. The executive director is required to supervise, direct, coordinate, and administer all activities necessary to fulfill the commission’s responsibilities.

The executive director, with the consent of the commission, is required to employ such staff as are necessary to adequately perform the functions of the commission, within budgetary limitations. The executive director must maintain headquarters in and reside in Leon County. The salary of the executive director is equal to that of a commissioner on the Florida Public Service Commission.

A person may not be appointed as the executive director until:

- A level 2 background investigation, pursuant to ch. 435, F.S, of the person is conducted by FDLE;
- The investigation is forwarded to the commission; and
- The commission determines that the person meets all the requirements for appointment.

The chair of the commission is required to appoint an inspector general to perform the duties of an inspector general as provided under s. 20.055, F.S.

Effective July 1, 2022, the commission is required to do all of the following:

- Exercise all state regulatory and executive powers respecting gambling, including, without limitation, pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts executed by the state pursuant to the Federal Indian Gaming Regulatory Act, and any other forms of gambling authorized by the Florida constitution or law, except for lottery games operated by the state.
- Establish procedures consistent with the Florida Administrative Procedure Act to ensure adequate due process in exercising its regulatory and executive functions.
- Ensure that Florida law is not interpreted in any manner that expands the activities authorized in ch. 24, F.S., (State Lotteries), ch. 285, part II, F.S., (Gaming Compact), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling).
- Review the Seminole Tribal Gaming Commission's rules and regulations for the operation of sports betting and propose any additional consumer protections to the Seminole Tribal Gaming Commission that the commission deems are appropriate.
- Evaluate information relating to abnormal sports betting that may indicate a concern about the integrity of a sports event or any other conduct with the potential to corrupt a betting outcome of a sports event for financial gain.
- Provide reasonable notice to state and local law enforcement, the Seminole Tribal Gaming Commission, and any appropriate sport's governing body of nonproprietary information that may concern the integrity of a sports event or any other conduct with the potential to corrupt a betting outcome of a sports event that may warrant further investigation by such entities.
- Review any matter within the scope of the jurisdiction of the Division.
- Review the regulation of licensees, permitholders, or persons regulated by the Division and the procedures used by the Division to implement and enforce the law.
- Review the procedures of the Division used to qualify applicants for a license, permit, or registration.
- Review violations reported by a state or local law enforcement agency, Department of Agriculture and Consumer Services, FDLE, DLA, DBPR, the Department of the Lottery, the Seminole Tribe of Florida, or any person licensed under ch. 24, F.S., (State Lotteries), ch. 285, part II, F.S., (Indian Reservations and Affairs), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), and determine if they should be referred to the Office of Statewide Prosecution.
- Refer criminal violations of ch. 24, F.S., (State Lotteries), ch. 285, part II, F.S., (Gaming Compact), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling) to the appropriate state attorney or to the Office of Statewide Prosecution, as applicable.
- Exercise all other powers and perform any other duties prescribed by the Legislature.

The commission is authorized to adopt rules to implement the above requirements.

The bill authorizes the commission to subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the commission's duties or powers.

The commission may submit written recommendations to enhance the enforcement of Florida gaming laws to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and is authorized to contract or consult with other state agencies as may be needed to discharge its duties.

Annual Report and Legislative Budget

Beginning December 1, 2022, the bill requires the commission to make an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. At a minimum, the report must include the following:

- Recent events in the gaming industry, including pending litigation, pending facility license applications, and new and pending rules.
- Actions of the commission relative to the implementation and administration of its enforcement authority.
- The state revenues and expenses associated with each form of authorized gaming. Revenues and expenses associated with pari-mutuel wagering must be further delineated by the class of license.
- The performance of each pari-mutuel wagering licensee, cardroom licensee, and slot licensee.
- Actions of the commission as the state compliance agency, and financial information published by the Office of Economic and Demographic Research, relative to gaming activities authorized pursuant to s. 285.710(13), F.S.
- A summary of disciplinary actions taken by the commission.
- The receipts and disbursements of the commission.
- A summary of actions taken and investigations conducted by the commission.
- Any additional information and recommendations that the commission considers useful or that the Governor, the Speaker of the House or the President of the Senate requests.

Beginning in the calendar year 2022, the commission must develop an annual legislative budget request pursuant to ch. 216, F.S. The budget is not subject to change by DLA, but it shall be submitted by DLA to the Governor for transmittal to the Legislature.

The commission shall exercise all of its regulatory and executive powers and shall adopt, apply, construe, and interpret all laws and administrative rules in a manner consistent with the gaming compact ratified, approved, and described in s. 285.710(3), F.S.

Effective July 1, 2022, the commission shall confirm, prior to the issuance of an operating license, that each permitholder has submitted proof with their annual application for a license, in such a form as the commission may require, that the permitholder continues to possess the qualifications prescribed by ch. 550, F.S. (pari-mutuel wagering), and that the permit has not been disapproved by voters in an election.

Background Screening Requirements and Inspections

The bill requires FDLE, at the request of the DGE, to perform a Level 2 background screening pursuant to ch. 435, F.S., on an employee of the DGE and on any other commission employee that commission deems a level 2 background screening is necessary, including applicants for employment. The commission must reimburse FDLE for the actual costs of such investigations.

In addition, FDLE must, at the request of the DGE, perform a Level 1 background screening pursuant to ch. 435, F.S., on any other commission employees, including applicants for employment, that are not subjected to a Level 2 background screening as described above.

The bill requires the DGE to conduct investigations of commissioners and commission employees, including applicants for contract or employment, as necessary to ensure the security and integrity of gaming operations in this state. The commission may require persons subject to such investigations to provide information, including fingerprints, as needed by FDLE for processing, or as is otherwise necessary to facilitate access to state and federal criminal history information.

Standards of Conduct

The bill creates s. 16.715, F.S., to provide standards of conduct and prohibit ex parte communications (i.e., communications from only one party to a proceeding).

The bill provides that commissioners are public officers and employees of the commission are public employees subject to the Code of Ethics for Public Officers and Employees set forth in ch. 112, part III, F.S., (Code of Ethics).

The bill also provides that commissioners and employees of the commission are governed by standards of conduct as provided in the bill. The standards of conduct are similar to the standards applicable to commissioners serving on the Public Service Commission. The standards of conduct may be more restrictive than the Code of Ethics but may not be construed to contravene the restrictions of Code of Ethics. In the event of a conflict, the more restrictive provision applies.

A commissioner or employee:

- May not accept anything from any business entity that, either directly or indirectly, owns or controls an entity regulated by the commission, or from any business entity that, either directly or indirectly, is an affiliate or subsidiary of an entity regulated by the commission.
- May not accept any form of employment or engage in any business activity with the following entities, while employed and for 2 years after service as a commissioner or 2 years after employment:
    - Any business entity that, either directly or indirectly, owns or controls an entity regulated by the commission:
    - An entity regulated by the commission; or
    - Any business entity that, either directly or indirectly, is an affiliate or subsidiary of an entity regulated by the commission.
- May not accept anything from a party in a proceeding currently pending before the commission.
- May not act in an unprofessional manner at any time during the performance of their official duties.
- Must avoid impropriety in all activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.
- May not directly or indirectly, through staff or other means, solicit anything of value from:
    - An entity regulated by the commission;
    - Any business entity that, whether directly or indirectly, is an affiliate or subsidiary of an entity regulated by the commission; or
    - Any party appearing in a proceeding considered by the commission in the last two years.
- Must annually complete at least four hours of ethics training that addresses, at a minimum, article II, section 8 of the Florida Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the state.
    - This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

A commissioner, employee, or a relative living in the same household as a commissioner or employee while employed and for 2 years after service as a commissioner or 2 years after employment may not:

- Have any financial interest, other than shares in a mutual fund, in:
    - Any entity regulated by the commission;
    - Any business entity which, either directly or indirectly, owns or controls any entity regulated by the commission; or
    - Any business entity which, either directly or indirectly, is an affiliate or subsidiary of any entity regulated by the commission.
- Place a wager in any facility licensed by the commission or any facility in the state operated by an Indian tribe that has a valid and active compact with the state.

A commissioner, employee, or a relative living in the same household as a commissioner or employee must immediately sell any prohibited financial interest that he or she acquires, during commissioner's term of office or the employee's employment with the commission, as a result of events or actions beyond the commissioner's, the employee's, or the relative's control.

A commissioner may not:

- Serve as the representative of any political party or on any executive committee or other governing body of a political party; serve as an executive officer or employee of any political party, committee, organization, or association; receive remuneration for activities on behalf of any candidate for public office; engage on behalf of any candidate for public office in the solicitation of votes or other activities on behalf of such candidacy; or become a candidate for election to any public office without first resigning from office.
- Make any public comment, during his or her term of office, regarding the merits of any proceeding under relating to decisions affecting substantial interests or hearings involving disputed issues of material fact, currently pending before the commission.
- Lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency except to represent the commission and department in his or her official capacity as a commissioner.

A commissioner or an employee may attend conferences along with associated meals and events that are generally available to all conference participants without payment of any fees in addition to the conference fee.

While attending a conference, a commissioner or an employee may attend meetings, meals, or events that are not sponsored, in whole or in part, by any representative of any person regulated by the commission and that are limited to commissioners or employees only, committee members, or speakers if the commissioner or employee is a member of a committee of the association of regulatory agencies that organized the conference or is a speaker at the conference.

A commissioner or an employee may attend a conference for which conference participants who are employed by a person regulated by the commission have paid a higher conference registration fee than the commissioner or employee, or to attend a meal or event that is generally available to all conference participants without payment of any fees in addition to the conference fee and that is sponsored, in whole or in part, by a person regulated by the commission.

The above standards of conduct may be more restrictive than the Code of Ethics, but may not be construed to contravene that code's restrictions. In the event of a conflict, the more restrictive provision applies.

The Commission on Ethics must accept and investigate any alleged violations of the above standards of conduct pursuant to the procedures contained in the Code of Ethics as described in ss. 112.322 through 112.3241, F.S., and provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to the Code of Ethics.

If, during the course of an investigation by the Commission on Ethics into an alleged violation, a person is alleged to have given or provided a prohibited thing, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person gave or provided a prohibited thing, the person may not appear before the commission or otherwise represent anyone before that commission for a period of two years.

A commissioner may request an advisory opinion from the Commission on Ethics, pursuant to s. 112.322(3)(a), F.S., regarding the standards of conduct or the prohibitions set forth in ss. 16.71 and 16.715, F.S., created by the bill.

Post Appointment and Employment Restrictions

Commissioners

The bill provides that for the 2 years immediately following the date of resignation or termination of appointment from the commission, a commissioner may not:

- Hold a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), or a license issued under ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling); be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), F.S., of such permitholder or licensee;
- Personally represent another person or entity for compensation before the executive or legislative branch unless employed by another agency of state government;
- Be a bingo game operator or an employee of a bingo game operator; or
- Accept employment by or compensation from:
    - a business entity that directly or indirectly, owns or controls an entity regulated by the commission;
    - an entity regulated by the commission;
    - a business entity which, directly or indirectly, is an affiliate or subsidiary of an entity regulated by the commission; or
    - a business entity or trade association that has been a party to a commission proceeding within the 2 years preceding the member's resignation or termination of service on the commission.

Employees

For the 2 years immediately following the date of resignation or termination of employment from the commission, a person may not:

- Hold a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), or a license issued under ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), be an officer, official, or employee of such permitholder or licensee, or be an ultimate equitable owner, as defined in s. 550.002(37), F.S., of such permitholder or licensee;
- Personally represent another person or entity for compensation before the executive or legislative branch unless employed by another agency of state government; or
- Be a bingo game operator or an employee of a bingo game operator.

A person who violates the post appointment and employment restrictions is subject to the penalties for violations of standards of conduct for public officers, employees of agencies, and local government attorneys provided in s. 112.317, F.S., and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct. However, such penalties do not apply to a former commissioner or employee who personally represents another person or entity for compensation before the executive or legislative branch.

Ex Parte Communications

The bill defines an "ex parte communication" as any communication that is:

- Not served on all parties to a proceeding, if the communication is written or printed, or the communication is in electronic form; or
- Made without adequate notice to the parties and without an opportunity for the parties to be present and heard, if the communication is oral.

The bill prohibits commissioners from initiating or considering ex parte communications concerning the merits, threat, or offer of reward in any proceeding that is currently pending before the commission. Additionally, the bill prohibits individuals from discussing ex parte with a commissioner the merits, threat, or offer of reward regarding any issue in a proceeding that is currently pending before the commission. These prohibitions do not apply to commission staff.

If a commissioner knowingly receives a prohibited ex parte communication relative to a proceeding to which he or she is assigned, the commissioner must place on the record of the proceeding copies of:

- All written communications received;
- All written responses to the communications; and
- A memorandum stating the substance of all oral communications received and all oral responses made.

The commissioner must give written notice to all parties to the ex parte communication that such matters have been placed on the record. Any party who desires to respond to an ex parte communication may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record. The commissioner may, if he or she deems it necessary to eliminate the effect of an ex parte communication, withdraw from the proceeding, in which case the chair must substitute another commissioner for the proceeding.

Any individual who makes an ex parte communication must submit to the commission a written statement describing the nature of such communication, to include:

- The name of the person making the communication;
- The name of the commissioner or commissioners receiving the communication;
- Copies of all written communications made and all written responses to such communications; and
- A memorandum stating the substance of all oral communications received and all oral responses made.

The commission must place on the record of a proceeding all such communications. Any commissioner who knowingly fails to place on the record any such communications within 15 days of the date of such communication, is subject to removal and may be assessed a civil penalty not to exceed $5,000.

The Commission on Ethics must receive and investigate sworn complaints of violations of the standards of conduct or prohibitions against ex parte communications, pursuant to the procedures contained in the Code of Ethics as described in ss. 112.322 through 112.3241, F.S.

If the Commission on Ethics finds that there has been a violation of the standards of conduct or prohibitions against ex parte communications by a commissioner, it must provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to the Code of Ethics, and to remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated the standards of conduct or prohibitions against ex parte communications.

The Governor must remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated the standards of conduct or prohibitions against ex parte communications, after a previous finding by the Commission on Ethics that the commissioner willfully and knowingly violated the standards of conduct or the prohibitions against ex parte communications in a separate matter.

If a commissioner fails or refuses to pay the Commission on Ethics any civil penalties for such violations, the Commission on Ethics may bring an action in any circuit court to enforce such penalty.

If, during the course of an investigation by the Commission on Ethics into an alleged violation of the standards of conduct or prohibitions against ex parte communications, allegations are made as to the identity of the person who participated in the ex parte communication, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person participated in the ex parte communication, the person may not appear before the commission or otherwise represent anyone before that commission for a period of two years.

Inspectors General

The bill amends s. 20.055(1), F.S., to include the executive director of the commission in the definition of "agency head," and the commission in the definition of "state agency," for purposes of responsibilities under the law governing agency inspectors general.

Division of Pari-Mutuel Wagering

The bill amends s. 20.165, F.S., removing a reference to the Division of Pari-Mutuel Wagering.

Seminole Compact Oversight

The bill amends s. 285.710, F.S., effective July 1, 2022, to provide that the commission is the state compliance agency designated as the state agency with authority to carry out the state's oversight responsibilities under the Compact.

Type Two Transfer

The bill provides for a type two transfer as defined in s. 20.06(2), F.S., effective July 1, 2022, of all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds of DBPR related to the oversight responsibilities by the state compliance agency for authorized gaming compacts under s. 285.710, F.S., the regulation of pari-mutuel wagering under chapter 550, F.S., the regulation of slot machines and slot machine gaming under chapter 551, F.S., the regulation of cardrooms under s. 849.086, F.S., are transferred by a type two transfer, to the commission.

Employees transferred from DBPR to the commission retain and transfer accrued leave balances.

Effective July 1, 2022, the Pari-mutuel Wagering Trust Fund under s. 455.116, F.S., is transferred from DBPR to the commission.

Reviser's Bill

The bill directs the Division of Law Revision to prepare a reviser's bill effective July 1, 2022, to replace references to the Division of Pari-mutuel Wagering and references to DBPR relating to gaming with references to the commission to conform the Florida Statutes to the type two transfer.

Appropriation

For the 2021-2022 fiscal year, the bill appropriates $2 million in nonrecurring funds from the General Revenue Fund and 15 positions with associated salary rate of $1,250,000 are authorized to the commission for the purposes of implementing the bill. These funds must support five commissioners, an executive director, general counsel, and other agency personnel as needed. The funds must cover all expenditures of the commission including, but not limited to, salaries and benefits, travel, background investigations, and fingerprinting fees.

Additionally, for the 2021-2022 fiscal year, the bill appropriates $100,000 in nonrecurring funds from the General Revenue Fund to DBPR for administrative support related to the commission. DBPR must provide administrative support to the commission during the 2021-2022 fiscal year, including, but not limited to, human resource management, accounting, and budgeting.

Working Group

The bill directs DBPR, in coordination with DLA and the Department of Management Services, to establish a working group to prepare the commission's legislative budget request for fiscal year 2022-2023 to be submitted by DBPR. The working group must develop estimates for the amount of money needed for administration of the commission, including, but not limited to:

- Costs relating to overall staffing and administrative support;
- Infrastructure and office space;
- Integration of technology systems and data needs and transfers;
- Law enforcement accreditation, staffing, and training;
- Organizational structure; and
- Other matters deemed necessary or appropriate by the working group to assure the seamless establishment of the commission and orderly transition of the duties and responsibilities under the type two transfer.

Application

If any law amended by this act was also amended by a law enacted during the 2021 Regular Session of the Legislature, the bill requires such laws to be construed as if they had been enacted during the same session of the Legislature and full effect must be given to each if possible.

Effective Date

The bill is tied to SB 2-A and except as otherwise provided, takes effect on the same date as such legislation if adopted in the same legislative session or extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may increase revenues associated with the implementation of additional enforcement measures relating to gambling law violations. The Revenue Estimating Conference has not reviewed this bill.

2. Expenditures:

   The bill may increase expenditures associated with the establishment and administration of a new commission, compensation of its staff, and the implementation of additional enforcement measures relating to gambling law violations.

A. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

To the extent that local law enforcement agencies are incurring costs related to enforcement, including but not limited to, investigation and prosecution, of violations of gambling laws, the bill may have an indeterminate positive fiscal impact on local government expenditures.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may prevent Floridians from falling victim to illegal gambling schemes.

C. FISCAL COMMENTS:

None.