

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 5A Pub. Records and Meetings/Florida Gaming Control Commission

SPONSOR(S): Rommel

TIED BILLS: CS/HB 3A **IDEN./SIM. BILLS:** SB 6-A

FINAL HOUSE FLOOR ACTION: 114 Y's 2 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 5A passed the House on May 19, 2021, as SB 6-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, and cardrooms at certain pari-mutuel facilities, penny-ante games, bingo, charitable drawings, game promotions (sweepstakes), and bowling tournaments. The Division of Pari-Mutuel Wagering in the Department of Business and Professional Regulation regulates pari-mutuel wagering and has regulatory oversight of permitted and licensed pari-mutuel wagering facilities.

SB 4-A, to which SB 6-A is linked, establishes additional enforcement measures to address violations of gambling laws and the conduct of unauthorized gaming in the state, including the creation of the Florida Gaming Control Commission (commission) within the Department of Legal Affairs (DLA). The commission will be the regulatory entity of the state with respect to gambling. The commission will also house the Division of Gaming Enforcement, which will be a criminal justice agency.

The bill creates a public record and public meeting exemption for the commission. The bill creates a public record exemption for information obtained by the commission that is exempt or confidential and exempt from public record requirements and creates a public meeting exemption for any portion of a commission meeting during which such information is discussed, provided certain requirements are met, including a requirement to record the entire closed session. The bill also creates a public record exemption for the recording of, and any minutes and records generated during, the closed portion of a commission meeting.

The bill provides that the public record and public meeting exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless reviewed and reenacted by the Legislature. The bill also includes a public necessity statement as required by the Florida Constitution.

The bill does not have a fiscal impact on local governments. The bill may have a minimal fiscal impact on the state. See Fiscal Impact on State Government.

The bill was approved by the Governor on May 25, 2021, ch. 2021-270, L.O.F., and will become effective on the same date that SB 4-A or similar legislation takes effect.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Meetings Law

Article I, s. 24(b) of the Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and open to public inspection.⁴

Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.⁵ The general law must state with specificity the public necessity justifying the exemption⁶ and must be no broader than necessary to accomplish its purpose.⁷ The general law must be approved by a two-thirds vote of the members present and voting for final passage.⁸

Furthermore, the Open Government Sunset Review Act⁹ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

¹ S. 286.011(1), F.S.

² *Id.*

³ S. 286.011(6), F.S.

⁴ S. 286.011(2), F.S.

⁵ Art. I, s. 24(c), FLA. CONST.

⁶ This portion of a public record or public meeting exemption is commonly referred to as a "public necessity statement."

⁷ Art. I, s. 24(c), FLA. CONST.

⁸ *Id.*

⁹ S. 119.15, F.S.

- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.¹⁰

The Act also requires the automatic repeal of a public record or public meeting exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹

Gaming in Florida

In general, gambling is illegal in Florida.¹² Chapter 849, F.S., prohibits keeping a gambling house,¹³ running a lottery,¹⁴ or the manufacture, sale, lease, play, or possession of slot machines.¹⁵ However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel¹⁶ wagering at licensed greyhound and horse tracks and jai alai frontons.¹⁷
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County.¹⁸
- Cardrooms¹⁹ at certain pari-mutuel facilities.

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,²⁰ bingo,²¹ charitable drawings,²² game promotions (sweepstakes),²³ and bowling tournaments.²⁴ The Family Amusement Games Act authorizes skill-based amusement games and machines at specified locations.²⁵

The Florida Constitution also authorizes state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.²⁶

Division of Pari-mutuel Wagering

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties.

¹⁰ S. 119.15(6)(b), F.S.

¹¹ S. 119.15(3), F.S.

¹² S. 849.08, F.S.

¹³ S. 849.01, F.S.

¹⁴ S. 849.09, F.S.

¹⁵ S. 849.16, F.S.

¹⁶ The term "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." S. 550.002(22), F.S.

¹⁷ See ch. 550, F.S., relating to the regulation of pari-mutuel activities.

¹⁸ See art. X, s. 23, FLA. CONST., and ch. 551, F.S.

¹⁹ The term "cardroom" is defined as "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." S. 849.086(2)(c), F.S.

²⁰ S. 849.085, F.S.

²¹ S. 849.0931, F.S.

²² S. 849.0935, F.S.

²³ Section 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

²⁴ S. 849.141, F.S.

²⁵ S. 546.10, F.S.

²⁶ The Department of the Lottery is authorized by art. X, s. 15, FLA. CONST. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., provides the purpose and intent for the operations of the state lottery.

Florida Gaming Control Commission

SB 4-A, to which this bill is linked, establishes additional enforcement measures to address violations of gambling laws and the conduct of unauthorized gaming in the state, including granting additional investigatory and prosecutorial authority to the Office of Statewide Prosecution in the Department of Legal Affairs (DLA), and the creation of the Florida Gaming Control Commission (commission) within the DLA. The commission, which will be comprised of five members appointed by the Governor, will house the Division of Gaming Enforcement, which will be a criminal justice agency.

SB 4-A establishes the commission as the regulatory entity of the state with respect to gambling. Its regulatory power includes 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, excluding the state lottery.

Effect of the Bill

The bill creates a public record and public meeting exemption for the Florida Gaming Control Commission.

The bill creates a public record exemption for information obtained by the commission that is exempt or confidential and exempt²⁷ from public record requirements. Any exempt or confidential and exempt information obtained by the commission retains exempt or confidential and exempt status and may only be released by the commission to an agency or governmental entity in the performance of the commission's official duties and responsibilities.

The bill creates a public meeting exemption for any portion of a commission meeting during which information that is exempt or confidential and exempt is discussed, provided certain requirements are met. To close a meeting, the commission chair must advise the commission at a public meeting that it is necessary to close the meeting to hear exempt or confidential and exempt information and must declare in writing the necessity for the closure and the specific reasons. In addition, a recording must be made of the entire closed session. The recording must include the times of commencement and termination of the closed session, all discussion and proceedings, and the names of all persons present.²⁸ No portion of a closed session may be off the record and the commission must maintain the recording.

The bill also creates a public record exemption for the recording of, and any minutes and records generated during, the closed portion of a commission meeting. These records are confidential and exempt until the information discussed is no longer exempt or confidential and exempt.

The bill provides for repeal of the public records and public meeting exemption on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the Florida Constitution, which provides that the commission would be unable to effectively and efficiently perform its duties and responsibilities without the exemptions.

²⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

²⁸ Only members of the commission, the DLA, or commission staff supporting the commission's function, and other persons whose presence is necessary for the presentation of exempt or confidential and exempt information are allowed to attend the closed portion of a commission meeting.

The bill takes effect on the same date that SB 4-A or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

The bill may create a minimal fiscal impact on the commission because staff responsible for complying with public record requests could require training related to the creation of the public record exemption. In addition, the commission could incur costs associated with redacting the exempt or confidential and exempt information prior to releasing a record. Finally, the commission could incur costs associated with the requirement to record closed portions of commission meetings. These costs, however, would be absorbed as they would be part of the daily responsibilities of the commission.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.