

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/CS/SB 666

INTRODUCER: Governmental Oversight and Accountability Committee, Regulated Industries Committee, and Senator Ring

SUBJECT: Governmental Reorganization

DATE: April 21, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Fav/CS
2.	McKay	Roberts	GO	Fav/CS
3.	Frederick	Meyer, C.	BC	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates the Department of Gaming Control (DGC) using a type two transfer as defined in section 20.06(2), Florida Statutes. The bill transfers and reassigns all statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of ch. 550, F.S., concerning pari-mutuel wagering, ch. 551, F.S., concerning slot machine gaming, and s. 849.086, F.S., concerning cardroom operations from the Division of Pari-mutuel Wagering within the DBPR to the DGC. The DGC is headed by the gaming commission, which is composed of the Governor and Cabinet. The commission members are responsible for appointing and removing the Executive Director and General Counsel for the department.

The bill requires the DGC to issue advisory opinions when requested by any law enforcement official, state attorney, or entity licensed by the department relating to the application of state gaming laws.

The bill moves the game promotions or sweepstakes registration from the Department of Agriculture and Consumer Services (DACS) to the DGC.

The DBPR estimates that the additional costs associated with the implementation of the provisions of the bill will be \$5,115,071 from the General Revenue Fund (\$3,581,481 recurring and \$1,533,590 non recurring).

This bill substantially amends sections 11.905, 20.165, 120.80, 212.12, 285.710, 455.116, 550.002, 550.0115, 550.01215, 550.0235, 550.0251, 550.0351, 550.054, 550.0555, 550.0651, 550.0745, 550.0951, 550.09511, 550.09512, 550.09514, 550.09515, 550.105, 550.1155, 550.0125, 550.135, 550.155, 550.1648, 550.175, 550.1815, 550.24055, 550.2415, 550.2614, 550.26165, 550.2625, 550.26352, 550.2704, 550.334, 550.3345, 550.3355, 550.3551, 550.3615, 550.375, 550.495, 550.505, 550.5251, 550.625, 550.6305, 550.6308, 550.70, 550.902, 550.907, 551.102, 551.103, 551.104, 551.1045, 551.105, 551.106, 551.107, 551.108, 551.109, 551.112, 551.114, 551.117, 551.118, 551.121, 551.122, 551.123, 565.02, 616.09, 616.241, 817.37, 849.086, 849.0915, 849.094, 849.12, and 849.48, Florida Statutes.

This bill creates section 20.318, Florida Statutes.

II. Present Situation:

Gaming Regulation

Currently, gaming is regulated by multiple state agencies. Although gambling is generally illegal,¹ certain gaming activities are authorized. The Department of Business and Professional Regulation oversees the regulation of pari-mutuel wagering, cardrooms, and slot machine gaming. The DBPR is also the state compliance agency charged with the oversight of the Seminole Indian Compact. The Department of Lottery conducts all legal lottery gaming. The Department of Agriculture and Consumer Services registers and regulates certain game promotions. All other gaming activity is enforced by state attorneys and local law enforcement agencies.

Division of Pari-mutuel Wagering

From 1932 to 1969 Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became the Division of Pari-mutuel Wagering (division) within the DBPR.² In 1993, the Department of Business Regulation merged with the Department of Professional Regulation and became the Department of Business and Professional Regulation.³ The mission of the division is the efficient, effective and fair regulation of authorized gaming at pari-mutuel facilities in Florida.⁴

The division's primary responsibilities include:

- Ensuring that races and games are conducted fairly and accurately.
- Ensuring the safety and welfare of racing animals.

¹ Section 849.08, F.S.

² Chapter 69-106, L.O.F.

³ Chapter 93-220, L.O.F.

⁴ <http://www.myflorida.com/dbpr/pmw/index.html> (last visited February 28, 2011).

- Collecting state revenue accurately and timely.
- Issuing occupational and permitholder operating licenses.
- Regulating pari-mutuel, cardroom, and slot machine operations.
- Ensuring that permitholders, licensees, and businesses related to the industries comply with state law.
- Serving as the State Compliance Agency for the Compact between the Seminole Tribe of Florida and the State of Florida.

The division is funded by the Pari-mutuel Wagering Trust Fund and has a \$13.8 million operating budget for Fiscal Year 2010-2011, appropriated as follows.

- \$9.1 million for the regulation of pari-mutuel wagering and cardrooms.
- \$4.7 million for the regulation of slot operations. From these funds, approximately \$400,000 is transferred to the Florida Department of Law Enforcement.

The division has 118 full time positions, as follows.

- 66 full time positions for the regulation of pari-mutuel wagering and cardrooms.
- 48 full time positions for the regulation of slot machine gaming.
- 4 full time positions for the State Compliance Agency for the Gaming Compact.

The division is divided into the following six functional areas.

- The Director's Office – Provides general oversight and administration of the division and oversees the division's budget and safeguards state revenues.
- The Office of Auditing - Conducts audits of permitholders to ensure integrity of wagering activity.
- The Office of Investigations – Examines possible rule, statute, or criminal violations and conducts criminal history and background checks on applicants.
- The Office of Operations - Issues operating licenses to permitholders and issues occupational licenses to businesses and individuals as well as serves as the primary regulator of pari-mutuel operations at pari-mutuel facilities.
- The Office of Slot Operations – Serves as the primary regulator of slot machine operations at pari-mutuel wagering facilities.
- State Compliance Agency - Ensures compliance with the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.

The division collects revenue from the following sources.

- Taxes and fees from the operation of pari-mutuel events.
- Occupational license fees from businesses and individuals associated with a facility.
- Cardroom license fee of \$1,000 per table.
- 10 percent tax on cardroom gross receipts.
- \$2.5 million annual slot machine operating license fee from each slot facility for fiscal year 2010-2011 (\$2 million each fiscal year thereafter).
- 35 percent tax on net slot machine revenue.

- \$250,000 compulsive and addictive gambling prevention program fee paid annually by each slot facility.⁵

The division provides regulatory oversight as follows.

- 35 permitholders operating at 28 facilities:
 - 16 Greyhound.
 - 3 Thoroughbred.
 - 1 Harness.
 - 6 Jai-Alai.
 - 1 track offering limited intertrack wagering and horse sales.
 - 1 Quarter Horse.
- 23 cardrooms operating at pari-mutuel facilities.
- 6 slot facilities located in Broward and Miami-Dade County pari-mutuel facilities.

Greyhound Racing

Greyhound racing was authorized in Florida in 1931.⁶ Betting is permitted on the outcome of the races around an oval track. The greyhounds typically chase a “lure,” which is usually a mechanical hare or rabbit. Racing greyhounds are those which are bred, raised, or trained to be used in racing at a pari-mutuel facility and are registered with the National Greyhound Association.⁷

Horse Racing

Horse racing was authorized in Florida in 1931. Currently, the state authorizes three forms of horse racing classes for betting: thoroughbred, harness, and quarter horse racing. Florida currently has approximately 500 horse farms throughout the state which generate an estimated direct economic impact of approximately \$2 billion.⁸

Thoroughbred Racing

Thoroughbred racing involves only horses specially bred and registered by certain bloodlines. The thoroughbred industry is highly regulated and specifically overseen by national and international governing bodies. Thoroughbred horses are defined as “a purebred horse whose ancestry can be traced back to one of three foundation sires and whose pedigree is registered in the American Stud Book or in a foreign stud book that is recognized by the Jockey Club and the

⁵ Section 551.118(2), Florida Statutes, require the Division of Pari-mutuel Wagering to contract with a vendor for the prevention of compulsive and addictive gambling. The division currently has a contract with the Florida Council on Compulsive and Addictive Gambling. The division does not have any employees dedicated to the implementation of this program.

⁶ *Deregulation of Intertrack and Simulcast Wagering at Florida's Pari-Mutuel Facilities*, Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.

⁷ Section 550.002(29), F.S.

⁸ <http://www.floridahorse.com/> (last visited on March 2, 2011).

International Stud Book Committee.”⁹ Pari-mutuel betting is allowed on the outcome of the race which runs typically from one mile to one and one-quarter mile.¹⁰

Harness Racing

Harness racing in Florida is currently only permitted at the Pompano Park facility. Harness racing uses standardbred horses, which are a “pacing or trotting horse . . . that has been registered as a standardbred by the United States Trotting Association” (USTA) or by a foreign registry whose stud book is recognized by the USTA.¹¹

Quarter Horse Racing

Quarter horse racing is currently only conducted at the Hialeah Park facility located in Miami-Dade County.¹² In addition to Hialeah Park, there are 12 additional quarter horse racing permits issued by DBPR but not licensed to conduct racing.¹³ Quarter horses are defined as those developed in the western United States which are capable of high speed for a short distance.¹⁴ They are registered with the American Quarter Horse Association. Quarter horse racing is over a much shorter distance than either the thoroughbred or harness race classes with races only permitted at less than 870 yards.

Jai Alai

Jai Alai is a game originating from the Basque region in Spain played in a fronton¹⁵ in which a ball is hurled through the court and points are assessed based on legal throws and catches. Jai Alai was first permitted in 1935. Florida is now the only state where Jai Alai is currently played.

Slot Machines

During the 2004 General Election, the electors approved Amendment 4 to the State Constitution, codified as s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005. The electors approved slot machines at the pari-mutuel facilities in Broward County, but the measure was defeated in Miami-Dade County. Under the provisions of the amendment, four pari-mutuel facilities are eligible to conduct slot machine gaming in Broward County: Gulfstream Park Racing Association (a thoroughbred permitholder), The Isle Casino and Racing at Pompano Park (a harness racing permitholder), Dania Jai Alai (a jai alai permitholder), and Mardi Gras Race Track and Gaming Center (a greyhound permitholder). Legislation was passed during the 2005 Special Session B, HB 1B, ch. 2005-362, L.O.F., that implemented Amendment 4 pursuant to the provisions of the constitutional amendment. The division is charged with

⁹ Section 550.002(35), F.S.

¹⁰ Anything over 870 yards is considered a thoroughbred racing distance.

¹¹ Section 550.002(33), F.S.

¹² As of February 28, 2011.

¹³ *Id.*

¹⁴ Section 550.002(28), F.S.

¹⁵ “A building or enclosure that contains a playing court with three walls designed and constructed for playing the sport of Jai Alai or pelota.” Section 550.002(10), F.S.

regulating the operation of slot machines in the affected counties. Of the four eligible in Broward County, three are operating slot machines.¹⁶

On January 29, 2008, another referendum was held under the provisions of Amendment 4, in which the slot machines in Miami-Dade County were approved. Three additional pari-mutuel facilities are eligible to conduct slot machine gaming in Miami-Dade County: Miami Jai-Alai (a jai-alai permitholder), Flagler Greyhound Track (a greyhound permitholder), and Calder Race Course (a thoroughbred permitholder). Calder and Flagler are currently operating slot machines.

In addition to the seven locations authorized for slot machines under the Florida Constitution, on July 1, 2010, a statutory amendment expanded the locations that were authorized slot machine gaming to include pari-mutuel facilities located in a charter county or a county that has a referendum approving slots that was approved by law or the Constitution, provided that such facility has conducted live racing for two calendar years preceding its application and complies with other requirements for slot machine licensure.¹⁷ Currently, only existing pari-mutuel facilities in Miami-Dade County qualify for slot machine authorization. Under the statutory provision, one additional facility became eligible for slot machine gaming: Hialeah Park (a quarter horse facility). Hialeah Park has applied for a license to conduct slot machine gaming but is not currently operating slot machine gaming.

Slot machine licensees are required to pay a licensure fee of \$2.5 million for fiscal year 2010-2011. The annual slot machine licensure fee is reduced in fiscal year 2011-2012 to \$2 million.¹⁸ In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.¹⁹ If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee shall pay to the state within 45 days after the end of the state fiscal year a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year.²⁰

Section 551.114(5), F.S., requires a slot machine licensee to provide adequate office space at no cost to the division and the Department of Law Enforcement for the oversight of slot machine operations. The division must adopt rules establishing the criteria for adequate space, configuration, and location and needed electronic and technological requirements for office space required by this subsection.

¹⁶ Dania Jai Alai has not applied for a license to operate slot machine gaming.

¹⁷ See, ch. 2010-29, L.O.F. and s 551.102(4), F.S.

¹⁸ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was \$3 million.

¹⁹ Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.

²⁰ Chapter 551.106(2), F.S. The 2008-2009 tax paid on slot machine revenue was \$103,895,349. It does not appear that this provision will be triggered because of the additional facilities beginning slot operations. Calder began slot operations in January 2010 and Flagler began operations in October 2009. Miami Jai Alai and Dania Jai Alai have not begun slot operations.

Public Fairs and Expositions

Twenty-five or more persons who are residents and qualified electors of a county where a public fair is to be located and who wish to form a not-for-profit association for the purpose of conducting and operating public fairs or expositions, may become incorporated by submitting a proposed charter to the DACS for review and approval and then presenting the proposal to the judge of the circuit court for the county in which the principal office of the association is to be located.²¹ Prior to conducting any fair, the association must apply for and receive a permit from DACS.²² Fair associations are not authorized to permit any gambling, betting, lottery, or similar act on fair grounds.²³ Any association who commits such a violation is subject to forfeiture of its charter. The Department of Legal Affairs is charged with prosecuting the fair association for such a violation in such a proceeding to annul the association's charter.²⁴ In addition, any violation of illegal gambling is enforced by local boards and authorities.²⁵

Game Promotions

In 1971, the Legislature enacted s. 849.094, F.S., which authorizes game promotions (also known as sweepstakes) in connection with the sale of consumer products. Section 849.094(1)(a), F.S., defines "game promotion" as a contest, game of chance, or gift enterprise, conducted within or throughout the state or other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present.

This provision is intended to allow companies to promote their products or services with a game promotion. For the purposes of this section, a game promoter, or "operator," cannot be a charitable, nonprofit organization.

The law prohibits operators from manipulating their sweepstakes so that all or part of the winning game pieces are allocated to certain franchisees, agents, or lessees, or to certain geographic areas of the state. Operators may not:

- Arbitrarily remove, disqualify, disallow, or reject any entry.
- Fail to award the prizes advertised.
- Publish false or misleading advertising about the game promotion.
- Require an entry fee, payment, or proof of purchase as a condition of entering the game promotion.
- Force a lessee, agent, or franchisee to participate in a game promotion.²⁶

There is no licensure requirement to conduct game promotions. Instead, operators of a game promotion with an announced total prize value of greater than \$5,000 must register the game promotion with DACS²⁷ and comply with the following requirements.

²¹ Section 616.01, F.S.

²² Section 616.15(1), F.S.

²³ Section 616.09, F.S.

²⁴ *Id.*

²⁵ Section 616.241(9), F.S.

²⁶ Sections 849.094(2) and (7), F.S.

²⁷ Section 849.094(3), F.S.

- File with DACS at least seven days before the commencement of a game promotion a copy of the rules and regulations of the game promotion and a list of all prizes and prize categories offered. A \$100 non-refundable fee to DACS to must accompany each filing.²⁸
- Conspicuously post the rules and regulations of the game promotion in each retail outlet or place where the game is played or participated in by the public.²⁹
- Legibly publish the rules and regulations in all advertising copy about the game promotion. If the advertisements include a website, a toll-free telephone number, or a mailing address where the full rules and regulations may be viewed, heard, or obtained for the duration of the promotion, the advertising copy only has to include the material terms of the rules and regulations.³⁰
- Financially back the prize pool with either a trust account or a surety bond.³¹
 - The trust account must be in a national or state-chartered financial institution, with a balance sufficient to pay or purchase the total value of all prizes offered. On a DACS-supplied form, an officer of the financial institution holding the trust account shall report the amount of money in the account, who established the trust account, and the name of the game promotion for which the account was established. The form must be filed within seven days of the game promotion.
 - In lieu of the trust account, the operator may demonstrate to DACS that it has obtained a surety bond equal to the total amount of prizes offered.
 - DACS may waive this requirement if the operator has conducted game promotions in Florida for at least five consecutive years and has not had any criminal, civil, or administrative actions filed against him by the state related to s. 849.094, F.S.
- Furnish DACS with a certified list of the names and addresses of all persons who won prizes valued at \$25 or more, and the dates on which they won. This list must be provided to DACS within 60 days of the winners being determined. DACS must retain this list for at least six months before disposing of it.³²

The DACS has the authority to adopt rules to enforce the game-promotion statute. Also, DACS and the Department of Legal Affairs have the authority to bring action in circuit court against any operator that they have reason to believe is in violation of s. 849.094, F.S.

Violators of the provisions in s. 849.094, F.S., or the rules adopted by DACS, are guilty of a second-degree misdemeanor, punishable by a maximum 60 days in jail and a \$500 fine.³³ Also, DACS may pursue civil penalties against violators of up to \$1,000 per violation.³⁴

Exempted from the provisions of s. 849.094, F.S., are activities regulated by the DBPR, the activities of nonprofit organizations, and any organization engaged in activities that do not involve the sale of consumer products or services. Also, the registration and oversight provisions

²⁸ *Id.*

²⁹ Section 849.094(3), F.S.

³⁰ *Id.*

³¹ Section 849.094(4), F.S.

³² Section 849.094(5), F.S.

³³ Section 849.094(9), F.S.

³⁴ Violations may include failing to post the game promotion rules or failing to maintain a surety bond in the amount of the total prize pot.

do not apply to television or radio broadcasting companies licensed by the Federal Communications Commission.

When s. 849.094, F.S., was created in 1971, the Internet as we know it today did not exist, nor were computers or machines routinely used in connection with game promotions. Utilizing electronic machines as game promotions in so-called “Internet cafes” is a relatively new occurrence in Florida.

In 2006, DACS received a game promotion filing from a company to put free-standing game promotion machines in truck stops.³⁵ The machines would dispense phone cards for \$5, and award the consumer a certain number of credits or game points which would have no cash value, but could be used to play a video game. The games resembled traditional slot machines, including three rows of three symbols that appear to spin, and depending on the final configuration revealed as a result of the predetermined game promotion entry, the consumer could earn prize credits which could be redeemed for cash. This company filed 20 separate game promotions in February 2007, and DACS treated each machine as a separate game promotion. Also in that same month, DACS began to see an influx of similar game promotions in different regions of the state.

As of November 6, 2008, there were at least 61 electronic game promotions registered with DACS. As of January 25, 2011, there are 15,586 registered game promotions.³⁶

Although there are no official numbers, several representatives of the larger sweepstakes software and Internet café operations estimate there are about 1,000 locations in Florida where electronic game promotion machines are used. According to those representatives, about half are state law compliant, meaning they provide game promotion entries in conjunction with the sale of a consumer product, register their game promotion with DACS when applicable, and operate a true game promotion with a finite number of winning entries that are paid out to the winners.

Type Two Transfers

Section 20.06(2), F.S., provides for a type-two transfer:

A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished.

(a) Any agency or department or a program, activity, or function thereof transferred by a type two transfer has all its statutory powers, duties, and

³⁵ *Review of Electronic Gaming Exceptions for Adult Arcades and Game Promotions*, Interim Report No. 2009-123, Florida Senate Committee on Regulated Industries, November 2008. A copy of the report is available at: http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-123ri.pdf.

³⁶ According to the numbers provided by DACS. The number of registered game promotions changes daily as new game promotions begin and old game promotions end.

functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred, unless otherwise provided by law. The transfer of segregated funds must be made in such a manner that the relation between program and revenue source as provided by law is retained.

(b) Unless otherwise provided by law, the head of the agency or department to which an existing agency or department or a program, activity, or function thereof is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions, to the extent authorized in this chapter.

(c) Unless otherwise provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

III. Effect of Proposed Changes:

The bill creates the Department of Gaming Control, which will have oversight authority over pari-mutuel wagering, cardrooms, slot machine gaming, and game promotions.

Section 1 transfers the administration of ch. 550, 551, and 849, F.S., from the Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation to the DGC by a type two transfer. This section also transfers the Pari-mutuel Wagering and Racing Scholarship Trust Funds from the Division of Pari-mutuel Wagering to the DGC.

Section 2 amends s. 11.905, F.S., requiring a review of the DGC by July 1, 2022.

Section 3 amends s. 20.165, F.S., to remove the Division of Pari-mutuel Wagering from the DBPR.

Section 4 creates the Department of Gaming Control and the Gaming Commission (commission). The bill provides that the commission shall be composed of the Governor and Cabinet and shall serve as agency head for the department. The commission shall be responsible for appointing and removing the executive director and general counsel for the department.

This section creates five divisions within the department, including a division of licensing, revenue and audits, investigation, law enforcement, and prosecution. The department is required to submit an annual budget to the Legislature and adopt rules to administer the laws under its authority. In addition, the commission is authorized to issue subpoenas and to exclude persons from gaming establishments within its jurisdiction.

This section requires the department to provide advisory opinions when requested by any law enforcement official, state attorney, or entity licensed by the department relating to the application of state gaming laws with respect to whether a particular act or device constitutes legal or illegal gambling under state laws and administrative rules. The bill provides that any

person acting in good faith upon an advisory opinion that such person requested is not subject to any criminal penalty for illegal gambling. This section provides that the department may employ sworn law enforcement officers. The section provides that the department must work with the Department of Revenue to ensure that licensees are in compliance with child support laws concerning support orders, subpoenas, orders to show cause, or written agreements with the Department of Revenue. In addition, this section provides that the department must close licenses after two year of providing notice of any deficiency to the applicant and must approve licenses that meet all statutory and rule requirements for licensure.

The bill requires the DGC to contract with the Department of Revenue to perform tax collection and audit services for Ch. 550, 551, 849 taxes.

Section 5 amends s. 120.80, F.S., to delete the exemption for hearing and notice requirements that applied to the Division of Pari-mutuel Wagering within the DBPR. The section creates the same exemptions for the activities of the DGC.

Section 6 amends s. 212.12, F.S., to specify data that must be included in returns for coin-operated amusement machines, and requires the Department of Revenue to report quarterly to the DGC on who is operating coin-operated amusement machines.

Section 7 amends 285.710, F.S., to provide that the DGC is the state compliance agency having the authority to carry out the state's oversight responsibilities under the Seminole Indian Compact and removes the reference to the Division of Pari-mutuel Wagering within the DBPR.

Section 8 removes the Pari-mutuel Wagering Trust Fund from the DBPR.

Sections 9 through 70 delete references to the Division of Pari-mutuel Wagering and replaces them with DGC. These sections require annual reports to be sent to the President of the Senate and Speaker of the House of Representatives instead of the Governor. These sections correct cross references and remove expired terms. In addition, these sections amend language to conform to current bill drafting conventions.

Section 71 amends s. 616.09, F.S., to provide that the DGC as well as the Department of Legal Affairs shall be responsible for instituting and prosecuting cases against fairs, for purposes of annulling the fair charter, alleging that the association was organized for or is being used as a cover to evade any of the laws of Florida against crime.

Section 72 amends s. 616.241, F.S., providing that enforcement of illegal gaming violations at public fairs and expositions is the responsibility of the DGC, local boards, and authorities.

Section 73 amends s. 817.37, F.S., to replace references to the Division of Pari-mutuel Wagering with references to the DGC.

Section 74 amends s. 849.086, F.S., pertaining to cardrooms. The section removes references to the Division of Pari-mutuel wagering and replaces them with the DGC. In addition, this section also allows cardrooms to utilize mechanical card shufflers.

Section 75 amends s. 849.0915, F.S., to change a reference from DACS to the DGC, in a provision that authorizes certain types of legal actions.

Section 76 amends s. 849.094, F.S., pertaining to game promotions. The section provides that the oversight of the game promotion regulations shall be the responsibility of the DGC instead of the DACS. The section strikes reference to charitable nonprofit organizations clarifying that those organizations must comply with the game promotion requirements when conducting a game promotion.

Section 77 amends s. 849.12, F.S., to permit the DGC to initiate certain types of legal proceedings.

Section 78 creates s. 849.48, F.S., to provide a license program for gambling businesses.

Section 79 provides an effective date of October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

A “department” is the basic building block of government activity and is the structure through which authority is exercised and to which money and positions are appropriated. Its principal subcomponent is a “division.” Units below that level may be created by departments; above that level they are created by statute. Since the governmental reorganization of 1969, a variety of structures have entered into the ch. 20, F.S., taxonomy. The most common of these are “offices” or “agencies” which are hybrids of departments and divisions but operating below the departmental level. Some of these were created to execute a matrix form of operations in which considerable autonomy was delegated to division-like units outside of the headquarters location. Chief among these has been the Department of Children and Family Services; the Department of Corrections; the Department of Financial Services; the Department of Revenue; and, the Department of Transportation.

Article IV of the State Constitution limits executive departments to twenty-five in number, excluding those authorized or created in that document. Using that benchmark, the following count is obtained:

- Constitutionally created or authorized (5): State Board of Administration, Department of Veterans' Affairs; Florida Fish & Wildlife Conservation Commission; Department of Elderly Affairs; Board of Governors; and, Parole Commission.
- Authorized by statute (21): Department of State; Department of Legal Affairs; Department of Financial Services; Department of Agriculture and Consumer Services; Department of Education; Department of Business and Professional Regulation, Department of Community Affairs; Department of Children & Family Services; Florida Department of Law Enforcement; Department of Revenue; Department Management Services; Department of Transportation; Department of Highway Safety and Motor Vehicles; Department of Environmental Protection; Department of Military Affairs; Department of Citrus; Department of Corrections; Department of Juvenile Justice; Department of the Lottery; Agency for Health Care Administration; and, Department of Health.
- Functional equivalent to department (1): Executive Office of the Governor.
- Department-like but statutorily proclaimed as subordinate (3): Agency for Persons With Disabilities; Agency for Workforce Innovation (DMS); and, Agency for Enterprise Information Technology (EOG).
- Total influenced by constitutional limitation: 22.

Unaffected by the limitation are a number of divisions with powers independent of the nominal department head. Examples of these are the Division of Emergency Management (DCA); the Division of Bond Finance (SBA), and the Division of Administrative Hearings (DMS). The Public Service Commission is excluded from the limitation since it is, by statute, a legislative branch agency.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

A type-two transfer assumes that the positions and budget will be transferred and remain the same; however, with the new structuring and creation of a new agency, workload and positions may differ. A total of 118 full-time equivalent positions and \$14,197,650 in operating budget and \$259.2 million non-operating budget will be transferred from the DBPR to the DGC.

According to the division, the bill does not transfer the personnel and functions of the division's legal section within DBPR's Office of the General Counsel. The legal section includes four attorneys, two administrative assistants, and a law clerk position that currently provide direct legal support to the division. However, the DBPR intends to transfer these positions and resources to the DGC.

The DBPR estimates the additional costs associated with implementation of the bill to be \$5,115,071 in general revenue (\$3,581,481 recurring and \$1,533,590 non recurring). There is no appropriation included in the bill. These costs are provided below.

Division of Law Enforcement

According to DBPR, the bill authorizes the DGC to employ sworn law enforcement officers and establishes a Division of Law Enforcement. Currently, the division does not employ sworn law enforcement officers, but estimates that a minimum of 36 additional full-time equivalent positions at a total cost of \$3,772,484 (\$2,823,516 recurring and \$948,968 non-recurring) will be needed.

Division of Prosecution

The bill requires the establishment of a Division of Prosecution to issue subpoenas and provide advisory opinions when requested by any law enforcement official, state attorney, or entity licensed by the DBPR relating to the application of state gaming laws. The DBPR estimates that an additional nine full-time equivalent positions at a cost of \$793,047 (\$757,965 recurring and \$35,082 non recurring) will be needed in order to meet the expanded legal resources required to implement the bill.

Information Technology

The DBPR utilizes a system called LicenseEase for the issuance of pari-mutuel, cardroom, and slot machine operating licenses; occupational licenses; and administrative complaints. Other entities within DBPR utilize this system. In addition, the division utilizes a revenue system called the Central Management System. This system is used exclusively by the division. If the bill is passed, the DGC may need to develop a new licensing system. In addition, the contract for the revenue system is between DBPR and ESI. A new contract may need to be negotiated or a new revenue system may need to be developed as a result of this transition. Additionally, DBPR has electronic images and workflow automation in an OnBase Document Management System that will require conversion to the new agency. The estimated cost for the creation of a new Document Management system for the new DGC is \$350,000. This includes \$180,00 for the cost of the software, \$32,000 for maintenance and \$138,000 for data conversion.

The division noted that the entirety of the division's technology systems will need to be separated from DBPR's systems. This involves building extract files to pull data from the Single Licensing System, the OnBase Document Management System, and the Central Management System. The Department of Business and Professional Regulation will need

to contract with the product vendors for these systems to create these extract routines that will compile division specific data from these systems and provide that information to the new department to allow for the continuation of the licensing and compliance functions. This work effort is estimated to be a non-recurring contracted services expense of \$168,000.

After the new agency is formed, the DBPR provided that it will need to receive the requirements for the extract file formats needed to load data into the data systems established by the DGC. The Division of Technology cannot begin work until these requirements have been defined. The estimated costs for file and print services and e-mail services for the DGC are \$30,000 and \$4,230, respectively.

In accordance with s. 550.135(2), F.S., all unappropriated funds in excess of \$1.5 million and those funds necessary for incurred obligations and subsequent year cash flow for slot machine regulation are transferred to the General Revenue Fund annually. Therefore, any fluctuations in expenditures or revenue will impact general revenue.

Department of Agriculture and Consumer Services

The DACS estimates that the transfer of game promotion regulations to the new agency will decrease revenue by \$499,817 and associated costs by \$314,505 in employee salary and related expenses from the General Inspection Trust Fund within the DACS. The net cost to the DACS is estimated to be \$314,508.

The Department of Agriculture and Consumer Services estimates that the transfer of game promotion regulations to the new agency will decrease revenue by \$499,817 and will decrease associated costs by \$250,140 in employee salary and related expenses from the General Inspection Trust Fund within the DACS.

VI. Technical Deficiencies:

The bill transfers all powers, duties, and functions of the Division of Pari-mutuel Wagering in the DBPR to the newly created Department of Gaming and Control under a type two transfer in Section 1 of the bill. Section 4 provides, in part, that the Department of Gaming and Control will consist of five divisions, including a Division of Revenue and Audits. However, Section 4 of the bill also provides that the department of Gaming and Control will contract with the DOR through an interagency agreement to perform the tax collection and financial auditing services for those taxes imposed on those facilities regulated by the DGC. The DOR currently processes tax payments on behalf of the Division of Pari-mutuel Wagering, but does not process tax returns, make distributions, or perform any audit functions. It is unclear if the DOR would continue its current tax payment processing function for the Department of Gaming and Control or if the bill intends to broaden the scope of the DOR's obligations.

If the DOR's obligations are to broaden, numerous statutory changes will be required in order for the DOR to collect the taxes imposed on those facilities regulated by the DGC. These statutory changes include but are not limited to:

- Requiring the facilities to file returns and to remit taxes to the DOR.
- Providing for the distribution of monies by the DOR.
- Providing changes to Chapter 213, F.S., relating to confidentiality and taxpayer rights.
- Providing clarification as to the roles of the Department of Gaming and Control's Division of Revenue and Audits and the DOR, and providing clarification as to the scope of "financial audit services" provided by the DOR.
- Providing the DOR with emergency rulemaking authority.

If the DOR continues its current tax payment processing function, then the provision in Section 4 of the bill related to the DOR collecting taxes and performing financial auditing services is unnecessary. The DGC can enter into an interagency agreement with the DOR in the same manner as that currently in place between the DOR and the Division of Pari-mutuel Wagering.

Section 1 of the bill transfers the Pari-mutuel Wagering and Racing Scholarship Trust Funds from the Division of Pari-mutuel Wagering within the DBPR to the DGC. The Racing Scholarship Trust Fund is housed within the Department of Education and not the DBPR. It is used to provide scholarships to eligible students attending Florida's colleges and universities. A total of \$16.9 million has been paid to this fund since the program began in 1949. The amount contributed to the fund in Fiscal Year 2009-10 was \$3,079 (from PMW Annual Report for FY 2009-10).

Section 2 of the bill amends s. 11.905, F.S., which provides for the review of the DGC by July 1, 2022. This section in current law was repealed in a reviser's bill, which passed both houses of the Legislature and is waiting to be enrolled.

Section 6 of the bill amends section 212.12(1)(a)2., F.S., to require operations of coin-operated amusement machines to report the number of machines operated in the aggregate and segregated according to machine type. This information is unnecessary, as the DOR has no need of this information for purposes of administering the sales tax and is not required to report tin information to the DGC under the bill.

The bill also amends s. 212.12(1)(a)2., F.S., to require the DOR to provide a quarterly report to the DGC of all businesses operating coin-operated amusement machines, the number of machines, and the location of each business. This information is currently confidential under s. 213.053, F.S. The bill would have to be amended to add a provision that would waive confidentiality for this purpose.

VII. Related Issues:

The rulemaking authority in section 4 of the bill should be consolidated for clarity, and made consistent with other rulemaking grants throughout the bill.

Revenue sharing with the Seminole Indian Compact relies on continued exclusivity of casino style and Class III gaming. Games legal as of February 1, 2010, have no impact on payments from the Tribe. This bill merges the regulation of pari-mutuel wagering, cardrooms, slot machines, and the regulation of game promotions into one agency. The bill creates an agency for the purpose of issuing advisory opinions on the issues of permitted gaming in the state. The bill

does not authorize any new Class III or casino-style game. Instead, the bill only combines multiple regulatory agencies into one agency. As a result, the bill should have no effect on the revenue sharing payments with the Tribe.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on March 30, 2011:

The committee substitute:

- Requires the Department of Gaming Control to contract with the Department of Revenue to perform tax collection and audit services for Ch. 550, 551, 849 taxes;
- Specifies data that must be included in returns for coin-operated amusement machines, and requires the Department of Revenue to report quarterly to the Department of Gaming Control on who is operating coin-operated amusement machines;
- Conforms reference to new department; allows department to file civil suits in certain circumstances; and,
- Requires the department to issue gambling licenses to applicants.

CS by Regulated Industries on March 9, 2011:

The CS makes technical changes to the bill to correct references in the bill from commission and board to Department of Gaming Control. The CS expands the powers and duties of the new department to include the ability to create rules, issue subpoenas, and to exclude certain persons from gaming establishments within the jurisdiction of the department. The CS authorizes both the Department of Legal Affairs and the Department of Gaming Control to prosecute public fair association charters to terminate the association's charter for violation of gaming provisions. The CS restores the current criminal penalties for game promotion violations and restores registration thresholds to \$5,000. The CS removes all references to arcade amusement games and machines. The CS removes the contingency from the effective date that linked the bill with SB 668 as a trust fund bill is no longer necessary upon the removal of the amusement arcade taxation. In addition, the CS changes the effective date of the bill to October 1, 2011.

B. Amendments:

None.