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 Regulated Industries Committee

BILL:	SB 710
INTRODUCER:	Senator Bogdanoff
SUBJECT:	Gaming
DATE:	January 5, 2012
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	**Pre-meeting**
2.			BC	
3.			RC	
4.				
5.				
6.				

I. Summary:

The bill creates the Department of Gaming Control (department) and the State Gaming Commission (commission). The commission serves as the head of the department. The commission consists of seven full-time members appointed by the Governor from a pool of nominees selected by a nominating committee. Commission members serve four year terms. The headquarters of the commission will be located in the district, which is defined as any county that has passed a slot machine or limited gaming referendum.

The bill transfers the Division of Pari-mutuel Wagering from the Department of Business and Professional Regulation to the department by a type two transfer. The bill provides that the department is the state compliance agency having oversight responsibilities under the Seminole Indian Compact. In addition, the bill provides that the department has oversight over pari-mutuel cardrooms, slot machine gaming, game promotions, and resort gaming.

The bill establishes time frames for initial meetings, commission meetings, and for the issuance and award of destination resort licenses. The commission may authorize up to three resort licenses, which may offer limited gaming in a limited part of the resort facility.

The bill establishes criteria for the award of destination resort licenses, requirements for continuing licensure, and pre-empts regulation of destination resorts to the state. Each licensee must invest a minimum of $2 billion in the development and construction of the resort. No more than 10 percent of the resort's square footage may be used for gaming. Applicants for resort licensees must pay a $1 million application fee for background investigations plus a one-time fee of $50 million dollars. Thereafter, licensees must pay an annual license fee of $2 million. Resort

licensees must pay a 10 percent gross receipts tax on gaming revenues. In addition, resort licensees must pay $250,000 per year for compulsive gambling programming.

The bill provides that each resort licensee must maintain a surety bond in an amount determined by the commission that must be set at the total amount of estimated license fees and taxes to become due for the resort.

The bill provides that persons 21 years of age or older may lawfully participate in gaming at destination resorts. Gaming may be conducted 24 hours per day, 365 days per year. Resort licenses may also pay $50,000 annually for a quota liquor license and may serve alcohol 24 hours per day.

The bill requires both suppliers' licenses and occupational licenses. The bill also creates s. 849.48, F.S., which requires each person, firm, association, partnership, or corporate entity that seeks to operate a gambling business or to allow gambling to occur on its premises to obtain a license from the department.

The bill corrects cross references in chs. 550 and 551, F.S., to reflect the new department. In addition, the bill amends the definition of "eligible facility" for slot machine licensees to include any facility located in a county as defined by s. 125.011, F.S., provided that the facility has conducted two calendar years of live racing *or games* for two calendar years immediately preceding its application for a slot machine license.

The bill provides that except as otherwise provided, the effective date of the act is July 1, 2012.

This bill substantially amends the following sections of the Florida Statutes: 20.165, 120.80, 561.20, 849.15, 849.231, 849.25, 551.102, 285.710, 550.002, 550.0251, 550.09514, 550.135, 550.24055, 550.2415, 550.2625, 550.2704, 550.902, 550.907, 551.101, 551.103, 551.104, 551.106, 551.107, 551.108, 551.109, 551.111, 551.112, 551.117, 551.119, 551.122, 551.123, 565.02, 817.37, 849.086, and 849.094.

The bill creates the following sections of the Florida Statutes: 20.318, 551.002, 551.003, 551.004, 551.006, 551.007, 551.008, 551.009, 551.011, 551.012, 551.301, 551.302, 551.304, 551.305, 551.306, 551.307, 551.308, 551.309, 551.310, 551.311, 551.312, 551.313, 551.314, 551.315, 551.316, 551.318, 551.319, 551.321, 551.322, 551.323, 551.325, 551.327, 551.328, 551.330, 551.331, and 849.48.

II. Present Situation:

Overview of Florida Gaming Laws and Regulations

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., governs the conduct of gambling in Florida. Section 849.15, F.S., prohibits the manufacture, sale, lease, play, or possession of slot machines.[2] Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S. Florida's

[1] Section 849.08, F.S.
[2] Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S.

gambling prohibition includes prohibitions against keeping a gambling house[3] and running a lottery.[4] Section 7, Art. X, of the Florida Constitution, prohibits lotteries, other than pari-mutuel pools authorized by law on the effective date of the Florida Constitution, from being conducted in Florida by private citizens.[5]

Gambling is permitted at licensed pari-mutuel wagering tracks and frontons,[6] by the state operated lottery,[7] which must operate "so as to maximize revenues in a manner consistent with the dignity of the state and the welfare of its citizens,"[8] and by the Seminole Indian tribe.

Chapter 849, F.S., contains other specific exceptions to the general gambling prohibition and authorizes certain gambling activities, such as cardrooms at pari-mutuel facilities,[9] bingo,[10] penny-ante poker,[11] arcade amusement games,[12] amusement games and machines,[13] and game promotions.[14] In Florida, if the gaming activity is not expressly authorized, then the gambling is illegal. Free-standing, commercial casinos are not authorized in Florida.

Pari-mutuel wagering and Cardrooms

The pari-mutuel industry in Florida is made up of greyhound racing, three different types of horseracing, and jai alai.[15] The regulation of the pari-mutuel industry is governed by ch. 550, F.S., and is administered by the Division of Pari-Mutuel Wagering (division) within the Department of Business and Professional Regulation (DBPR). Chapter 550, F.S., provides specific licensing requirements, taxation provisions, and regulations for the conduct of the industry.

Pari-mutuel facilities within the state are allowed to operate poker card rooms under s. 849.086, F.S. No-limit poker games are permitted.[16] The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. Authorized games and cardrooms do not constitute casino gaming operations. Instead, such games are played in a non-banking matter, i.e., the house [17] has no stake in the outcome of the game. Such activity is regulated by the DBPR and must be approved by an ordinance of the county commission where

[3] Section 849.01, F.S.
[4] Section 849.09, F.S.
[5] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.
[6] *See* ch. 550, F.S., for the regulation of pari-mutuel activities.
[7] The Department of the Lottery is authorized by Art. X, s. 15, 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., provides the legislative purpose and intent in regard to the lottery.
[8] *See* s. 24.104, F.S.
[9] Section 849.086, F.S. Section 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.
[10] Section 849.0931, F.S.
[11] Section 849.085, F.S.
[12] Section 849.161(1)(a), F.S
[13] Section 849.161(1)(b), F.S.
[14] Section 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[15] "Jai alai" or "pelota" means a ball game of Spanish origin played on a court with three walls. *See* s. 550.002(18), F.S.
[16] Section 849.086(8)(b), F.S. Prior to the effective date of ch. 2010-29, L.O.F., the maximum bet was $5.
[17] Section 849.086(2)(j), F.S., defines "house" as "the cardroom operator and all employees of the cardroom operator.

the pari-mutuel facility is located. Each cardroom operator must pay a tax of 10 percent of the cardroom operation's monthly gross receipts.[18]

Slot Machine Gaming at Pari-mutuel Facilities

Slot machine[19] gaming at licensed pari-mutuels is governed by ch. 551, F.S. Pari-mutuel facilities that operate slot machine gaming are generally known as "racinos." During the 2004 General Election, the electors approved Amendment 4 to the state constitution, codified as Art. X, s. 23, 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. In addition to the slot machines authorized under the Florida Constitution, Class III slot machines are also permitted 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.[20] Currently, only existing pari-mutuel facilities in Miami-Dade County qualify for slot machine authorization. There are five pari-mutuels in those counties conducting slot machine gaming.

Slot machine licensees are required to pay a license fee of $2 million per fiscal year.[21] In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.[22] 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 must 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 that resulted in the revenue shortfall.[23]

Seminole Indian Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a tribal-state compact under the Indian Gaming Regulatory Act of 1988[24] that authorizes the Tribe to conduct Class III gaming[25] at seven tribal facilities throughout the state. The compact was subsequently ratified by the Legislature.[26]

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[18] Section 849.086(13)(a), F.S.

[19] Section 551.102(8), F.S., defines "slot machine" as the term is used in ch. 551, F.S., for the regulation of slot machine gaming at the qualifying Miami-Dade and Broward county pari-mutuels.

[20] Section 551.102(4), F.S.

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

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

[23] 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 Racetrack began slot operations in January 2010 and Flagler Greyhound Track began operations in October 2009. Miami Jai Alai and Dania Jai Alai have not begun slot operations.

[24] The Indian Gaming Regulatory Act of 1988 or "IGRA," Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 et seq.

[25] The Indian Gaming Regulatory Act of 1988 divides gaming into three classes:

- "Class I gaming" means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations.
- "Class II gaming" includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo. Class II gaming may also include certain non-banked card games if permitted by state law or not explicitly

The compact has a 20-year term. It permits the Tribe to offer slot machines, raffles and drawings, and any other new game authorized for any person for any purpose, at all seven of its tribal casinos.[27]

The compact permits the Tribe to conduct banked card games, including blackjack, chemin de fer, and baccarat, but the play of the banked card games is not allowed at the casinos at the Brighton or Big Cypress facilities. If these banked games are authorized for any other person for any other purpose, except if banked card games are authorized by a compact with the Miccosukee Indians, the Tribe would be authorized to offer banked cards at all seven of its facilities. The authority for banked card games terminates at the end of 5 years unless affirmatively extended by the Legislature or the Legislature authorizes any other person to offer banked card games.

In exchange for the Tribe's exclusive right to conduct slot machine gaming outside of Miami-Dade and Broward counties and the exclusive right to offer banked card games at the specified facilities (these grants of authority are known as the "exclusivity provision"), the compact provides for revenue sharing payments by the Tribe to the state as follows:

- During the initial period (first 24 months), the Tribe is required to pay $12.5 million per month ($150 million per year);
- After the initial period, the Tribe's guaranteed minimum revenue sharing payment is $233 million for year 3, $233 million for year 4, and $234 million for year 5;
- After the initial period, the Tribe pays the greater of the guaranteed minimum or payments based on a variable percentage of annual net win[28] that range from 12 percent of net win up to $2 billion, to 25 percent of the amount of any net win greater than $4.5 billion;
- After the first 5 years, the Tribe will continue to make payments to the state based on the percentage of net win without a guaranteed minimum payment; and
- If the Legislature does not extend the authorization for banked card games after the first 5 years, the net win calculations would exclude the net win from the Tribe's facilities in Broward County.

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prohibited by the laws of the state but the card games must be played in conformity with the laws of the state. A tribe may conduct Class II gaming if:
  - the state in which the tribe is located permits such gaming for any purpose by any person, organization or entity; and
  - the governing body of the tribe adopts a gaming ordinance which is approved by the Chairman of the National Indian Gaming Commission.
- "Class III gaming" includes all forms of gaming that are not Class I or Class II, such as house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

[26] Chapter 2010-29, L.O.F.

[27] *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida,* approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. (hereinafter *Gaming Compact*) The Tribe has three gaming facilities located in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa).

[28] The compact defines "net win" as "the total receipts from the play of all Covered Games less all prize payouts and free play or promotional credits issued by the Tribe."

The compact is currently in the second year of the initial period.

The compact provides for the expansion of gaming in Miami-Dade and Broward counties under the following limited circumstances:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuels located in Miami-Dade and Broward counties and if 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.
- If new games are authorized at any location in Miami-Dade and Broward counties within the first 5 years of the Compact, the guaranteed minimum payment would no longer apply to the Tribe's revenue sharing payments and the $1 billion guarantee would not be in effect. The Tribes payments would be based on the applicable percentage of net win.

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.

Game Promotions

Game promotions are regulated under s. 849.094, F.S.[29] In 1971, the Legislature enacted s. 849.094, F.S., which provides for game promotions in connection with the sale of consumer products.[30] 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. However, "game promotion" shall not be construed to apply to bingo games conducted pursuant to s. 849.0931.

This provision is intended to allow companies to promote their products or services with a promotion. A game promoter, or "operator," is defined as "any person, firm, corporation, or association or agent or employee thereof who promotes, operates, or conducts a game promotion, except any charitable nonprofit organization."[31]

[29] Section 849.094, F.S., does not explicitly authorize game promotions but instead defines the term "game promotion" and provides requirements for the conduct of certain game promotions. *See Beasley Broadcasting, Inc. v. Department of State, Division of Licensing,* 693 So.2d 668 (Fla. 2d DCA 1997).
[30] *See* ss. 1-9, ch. 71-304, L.O.F.
[31] Section 849.094(1)(b), F.S.

The law prohibits operators from manipulating their game promotion 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:[32]

- 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; or
- Force a lessee, agent, or franchisee to participate in a game promotion.

There is no license required to conduct a game promotion and game promotion proceeds are not taxed. Instead, operators of a game promotion with an announced total prize value of greater than $5,000 must register the game promotion with the Department of Agriculture and Consumer Services (DACS). [33]

Economic Impact of Casino-Oriented Destination Resorts
According to Senate Regulated Industries Committee Interim Report: *Review Expansion of Casino Gaming in Other States*, October 2010:

> The Las Vegas Strip emerged in the 1940s. Over thirty years later, casino gaming was legalized in Atlantic City, New Jersey. The landscape of casino gaming has changed drastically within the last decade. Excluding casinos operated by the Indian tribes and racinos, 13 states had operational casinos in 2010. As a result, gaming is no longer limited to Las Vegas and Atlantic City. Now persons who want to visit a casino can find one in Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, Pennsylvania, and South Dakota. In 2009, Ohio authorized four casinos. A citizen initiative is on the November 2010 ballot in Maine to authorize casino gaming. Maryland approved casino gaming in 2008.[34] New York, Massachusetts, Rhode Island, and Texas are also considering authorizing casinos.

Within the past year, additional states have authorized casino gaming within their boundaries, including Maine and Massachusetts. Reports have also indicated that both Rhode Island and Kentucky may include a ballot question concerning the authorization of casino gaming on the 2012 ballot.[35]

In the most recent numbers available, the American Gaming Association's *2011 State of the States Report*[36] indicated that the commercial casino industry employed more than 340,000 people earning more than $13 billion in total wages in 2010. The report also described casinos as

[32] Sections 849.094(2) and (7), F.S.
[33] Section 849.094(3), F.S.
[34] Maryland is not included in this report as one of the 13 states with full commercial casinos because Maryland law authorizes only slot machine gaming at four facilities state-wide and not full casino gaming. Maryland's first slot machine casino opened on September 28, 2010.
[35] See, http://www.courier-journal.com/article/20111213/NEWS01/312130071/Gov-Steve-Beshear-says-he-ll-propose-amendment-expand-gambling (Last visited December 19, 2011).
[36] A copy of the report can be viewed at: http://www.americangaming.org/files/aga/uploads/docs/sos/aga-sos-2011.pdf

significant contributors to the nation's economy, with gross gaming revenues totaling more than $34 billion in 2010.

Executive Branch Structure
Article IV of the Florida Constitution, limits executive departments to 25 in number, excluding those authorized or created in that document. There are five constitutionally created or authorized departmental entities: State Board of Administration; Department of Veterans' Affairs; Florida Fish & Wildlife Conservation Commission; Department of Elderly Affairs; Board of Governors; and the Parole Commission.

There are 21 departments authorized by statute: 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 Economic Opportunity; Department of Children & Family Services; Florida Department of Law Enforcement; Department of Revenue; Department of 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 the Department of Health.

The Executive Office of the Governor may also be considered the functional equivalent of a department.

In summary, there appears to be 22 state entities that are executive departments, so Florida has three available slots for any new agencies the Legislature may in the future consider creating.

III. Effect of Proposed Changes:

Senate Bill 710 creates the Department of Gaming Control (department). The department is responsible for oversight of all gaming in the state, including pari-mutuel wagering. In addition, the head of the department, the State Gaming Commission, may issue three destination resort licenses with limited gaming facilities in Florida.

Section 1: Amends s. 20.165, F.S., to delete the Division of Pari-mutuel Wagering from the Department of Business and Professional Regulation.

Section 2: Creates the Department of Gaming Control (department) and the State Gaming Commission (commission). The bill provides that the commission shall serve as agency head for the department. The commission shall be responsible for appointing and removing the department's executive director and general counsel.

This section creates the following three divisions within the department: the division of licensing, the division of revenue and audits, and the division of enforcement. The department is required to submit an annual budget to the Legislature and adopt rules to administer the laws under its authority. In addition, this section specifies the general powers and duties of the department, including the authority to adopt rules to implement its statutory duties. It authorizes

the commission to issue subpoenas and to exclude persons from gaming establishments within its jurisdiction.

This section provides that the department may employ sworn law enforcement officers. This section provides that the department must contract with the Department of Revenue to perform the tax collecting and financial auditing services required by entities licensed by the department. The department must also 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. When directed by the court or the Department of Revenue, the department must deny or suspend any license when the applicant is not in compliance with child support orders. In addition, this section provides that the department must close licenses after two years of providing notice of any deficiency to the applicant and must approve licenses that meet all statutory and rule requirements for licensure.

Section 3: Amends s. 120.80, F.S., deleting the exemption for hearing and notice requirements that applied to the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation. The section creates the same exemptions for the activities of the Department of Gaming Control.

This section amends s. 120.80, F.S., to exempt the commission from certain provisions of the Florida Administrative Procedures Act, in ch. 120, F.S., specifically:

- The notice and hearing requirements of ss. 120.569 and 120.57(1)(a), F.S., for proceedings related to the issuance, denial, renewal, or amendment of a destination resort license;
- The process and deadlines in s. 120.60, F.S., for granting licenses does not apply to applications for a destination resort license; and
- The process for petitioning for, or granting a waiver or variance, pursuant to s. 120.542, F.S.

Section 4: Divides ch. 551, F.S., into three parts. Part I of ch. 551, F.S., shall be entitled "State Gaming Commission," part II of ch. 551, F.S., shall be entitled "Slot Machines," and part III of ch. 551, F.S., shall be entitled "Destination Resorts."

Section 5: Creates definitions for terms used in this part, including the terms commission, chair, conflict of interest, and financial interest. It defines financial interest to include owning an interest in any class of outstanding securities issued to a party to a matter under consideration by the department or commission. However, a financial interest would not include owning an indirect interest such as a mutual or stock portfolio. A financial interest also includes employment by, or being an independent contractor for a party to a matter under consideration by the department or commission.

Section 6: Creates the State Gaming Commission and specifies its governance. The commission will consist of seven full-time members appointed by the Governor and shall receive a compensation of $125,000 per year. The chair shall be compensated at $135,000 per year. To create staggered terms, four of the initial appointees shall serve 4-year terms and the other three appointees shall serve 2-year terms; thereafter, all appointees shall serve 4-year terms. Terms expire on June 30 of the applicable year. Any commissioner whose term has expired shall

continue serving until a replacement is appointed. Vacancies are filled in the same manner as initial appointments.

The bill specifies that the commissioners must be Florida residents and experienced in corporate finance, tourism, convention and resort management, gaming, investigation or law enforcement, business law, or related legal experience, except that:

- One member of the commission must be a Florida-licensed certified public accountant with at least 5 years of experience in general accounting; and
- One member must have experience in the fields of investigation or law enforcement.

A quorum consists of 4 members.

The bill prohibits the appointment to the commission of:

- Elected officials;
- Persons with a direct or indirect financial interest in applicants for a resort license or resort licensees;
- Persons who are related within the "second degree of consanguinity"[37] or affinity to any person licensed by the commission; and
- Persons who have been indicted for, convicted of, pled guilty or nolo contendere to, or forfeited bail for any felony or misdemeanor crime involving gambling or fraud, in any of the 50 states, within the 10 years preceding their appointment.

The Governor will appoint one member of the commission to serve as the chair. The chair will be the administrative head of the commission and would be responsible for setting the agenda for commission meetings and approving all notices, vouchers, subpoenas, and reports required by the act. The bill also provides for a vice chair to be elected by his or her fellow members during the commission's first meeting.

Other governance issues include:

- The commission headquarters will be in the district. However, as defined in s. 551.302(6), F.S., which defines a district to mean any county that has authorized slot machines or limited gaming by a county-wide referendum, the term, district, may include multiple counties;
- The initial meeting of the commission must be held within thirty days of the effective date of this section;
- The commission must meet at least once monthly;
- The chair or 4 commissioners can call a meeting upon 72 hours' notice; and
- The commission sits as the agency head for purposes of ch. 120, F.S., except that the commission's executive director is the agency head for purposes of final agency action under ch. 120, F.S., for all regulatory issues delegated to the executive director.

Section 7: Creates the State Gaming Commission Nominating Committee consisting of three members from the Senate and three members from the House of Representatives. One member from each house must be a member of the minority party. Initial appointments to the committee

[37] Legally defined as relatives two degrees removed, such as great aunts, great uncles, and second cousins. *See*, *In re Gonzalez*, 2000 WL 492102 (Fla. Cir. Ct. 2000).

must be made within 10 days of the effective date of this section. Members serve two-year terms that run concurrent with the membership of the House of Representatives. Members serve at the pleasure of the presiding officer who appointed that member. The chair of the committee shall be appointed by the President of the Senate in even numbered years and by the Speaker of the House in odd numbered years.

A majority of the members are necessary to conduct any business of the committee. The proceedings and meetings will be staffed by the Office of Legislative Services. The committee may spend up to $10,000 to advertise a vacancy on the commission. Applicants for vacancies on the commission may receive per diem to travel and appear before the committee.

The committee is responsible for selecting and nominating at least three candidates for every vacant position on the commission for the Governor's approval and appointment. The committee must provide a list of candidates to the Governor within 60 days of the effective date of this section. The Governor must make his selection within 60 days from the date he receives the list of candidates. Appointments by the Governor shall be subject to Senate confirmation.

In addition to advertising vacancies on the commission and nominating candidates for the positions, the committee may advertise and collect applications for the initial executive director position with the commission and provide those to the commission once it has formed.

This section is effective upon becoming law.

Section 8: Authorizes the commission to appoint and remove a full-time executive director, who will perform all the duties assigned by the commission, and to employ staff and consultants as necessary.

This section also specifies the types of people who may not be hired, depending on their previous 3 years work history, including persons with a controlling interest in an applicant, licensee, or tribal facility, and persons whose spouse, parent, child, or child's spouse or sibling is a member of the commission, a director of, or a person financially interested in, an applicant or licensee.

Section 9: Authorizes the commission to employ sworn law enforcement officers who have arrest authority pursuant to s. 901.15, F.S., who must have the qualifications for law enforcement officers under s. 943.13, F.S., have full law enforcement powers, and who must be certified under s. 943.1395, F.S. The department may, by interagency agreement, employ the Department of Law Enforcement to enforce any criminal law, conduct any criminal investigation, or enforce any statute within the jurisdiction of the department or commission.

Section 10: Provides that the commission must adopt a comprehensive code of ethics for its members and staff. Generally, the code of ethics would prohibit commissioners, the executive director, and employees from having a direct or indirect financial interest in the entities they will regulate. It would also prohibit engaging in political activity, including using one's official position to influence the result of an election. Also, employees or agents of the commission would be prohibited from engaging in outside employment related to the activities or persons regulated by the commission until three years after leaving employment or membership on the commission.

Section 11: Provides that the commissioners, the executive director, and each managerial employee must file annual financial disclosures. The bill also specifies the circumstances in which commissioners and staff must immediately file disclosures, including matters related to criminal arrests, negotiations for an interest in a licensee or applicant, and negotiations for employment with a licensee or applicant. These persons are also prohibited from engaging in activities that may constitute a conflict of interest and from accepting gifts from licensees, applicants, or entities otherwise affiliated with licensees or applicants. These persons must report any attempted bribes.

Section 12: Prohibits commissioners, licensees, applicants, or any affiliate or representative of an applicant or licensee from engaging directly or indirectly in an *ex parte* communication with a member of the commission concerning a pending application, license, or enforcement action or concerning a matter that likely will be pending before the commission.

Any *ex parte* communication must immediately be reported in writing to the chair and placed on the record. Persons who make the *ex parte* communication must submit to the commission a written description of the communication which identifies the commissioner who received the communication. A commissioner who fails to disclose an *ex parte* communication with 15 days of the communication is subject to removal from office and a civil penalty not to exceed $25,000.

Any such violation will be investigated by the Commission on Ethics.

Section 13: Provides that a violation of the act by a commissioner may result in disqualification or constitute cause for removal by the Governor. The Governor may impose other disciplinary action as determined by the commission. Violations by employees may result in termination of employment. If the violation involves an unintentional financial interest in a licensee or applicant, the person would not have violated the act if they divested their financial interest within 30 days after the interest was acquired.

Section 14: Provides that part III of ch. 551, F.S., may be cited as the "Destination Resort Act" or "Resort Act."

Section 15: Provides 22 definitions for the Resort Act, including the following terms:

- "Destination resort" or "resort" means a freestanding, land-based structure in which limited gaming may be conducted. A destination resort is a mixed-use development consisting of a combination of various tourism amenities and facilities, including, but not limited to, hotels, villas, restaurants, limited gaming facilities, convention facilities, attractions, entertainment facilities, service centers, and shopping centers.
- "District" means a county in which a majority of the electors voting in a countywide referendum have approved the conduct of slot machine gaming as defined in s. 551.102, F.S., or a majority of the electors voting in a countywide referendum have passed a referendum allowing for limited gaming.
- "Gross receipts" means the total of cash or cash equivalents received or retained as winnings by a resort licensee and the compensation received for conducting any game in which the resort licensee is not party to a wager, less any cash taken in fraudulent acts

perpetrated against the resort licensee for which the resort licensee is not reimbursed. The term does not include counterfeit money or tokens, foreign currency that cannot be converted into U.S. currency, promotional credits or "free plays," or the amount of extended credit until collected from the customer.

- "Licensee" means, as the context requires, a resort licensee, supplier licensee, or occupational licensee.
- "Limited gaming," "game," or "gaming," as the context requires, means the games authorized under this part in a limited gaming facility, including, but not limited to, those commonly known as baccarat, twenty-one, poker, craps, slot machines, video gaming of chance, roulette wheels, Klondike tables, punch-board, faro layout, numbers ticket, push car, jar ticket, pull tab, or their common variants, or any other game of chance or wagering device that is authorized by the commission.

Section 16: Specifies the commission's powers and duties. The commission will have jurisdiction over and shall supervise all limited gaming activity governed by this act, including the power to:

- Authorize limited gaming at three resorts;
- Conduct investigations as necessary to fulfill its responsibilities;
- Use an invitation to negotiate process for applicants based on minimum requirements established by this legislation;
- Investigate each applicant for a resort license and determine eligibility, among competing applicants, based on which ones best serve the interest of the residents of Florida based on the:
  - Potential for economic development presented by the applicant's proposed investment in infrastructure, such as hotels and other nongaming entertainment facilities; and the
  - Applicant's ability to maximize revenue for the state;
- Grant licenses;
- Establish and collect fees for conducting background checks on all applicants for licenses and persons who are contracted to perform services at the resorts;
- Issue subpoenas;
- Require a person to file a statement in writing and under oath in response to the commission's investigation;
- Keep accurate and complete records of its proceedings;
- Apply to the courts for injunctive relief to enforce the act and any rules adopted by the commission;
- Establish field offices, as necessary; and
- Suspend or revoke the license of any person found to no longer be qualified. The commission also can deny, revoke, suspend, or place conditions on a licensee who violates any provision of the act, a rule adopted by the commission, or an order of the commission.

Additionally, the commission, the Florida Department of Law Enforcement (FDLE), and local law enforcement agencies have unrestricted access to inspect resort facilities and gaming devices at all times, and share concurrent authority to investigate criminal violations of this act and any other criminal activity that may be occurring at a resort.

Section 17: Authorizes the commission to adopt all rules necessary, including emergency rules, to implement, administer, and regulate limited gaming. The bill lists the specific areas in which the commission is authorized to adopt rules, including the types of games, the time and place for the gaming, and the structures where limited gaming is authorized. The commission also can establish procedures to scientifically test slot machines and other authorized gaming equipment. The commission can adopt any rule necessary to accomplish the purposes of the act.

Section 18: Provides that the regulation of gaming at destination resorts is pre-empted to the state, and no local government may enact any ordinance attempting to regulate such activities.

Section 19: Provides that notwithstanding any law to the contrary, the commission may not award a resort license to any entity prior to the voters in the county where the resort would be located approving a referendum allowing slot machine gaming or allowing limited gaming. Also, notwithstanding any law to the contrary, a person who is at least 21 years of age may lawfully participate in authorized gaming at a resort destination.

Section 20: Establishes a detailed process for awarding destination resort licenses. Licenses will be awarded through an invitation to negotiate (invitation) process in which applicants reply on forms provided by the commission in response to the invitation to bid. The commission must issue its invitation within 90 days of the commission's first meeting. Proposals in response to the invitation must be received within 90 days after issuance of the invitation.

The commission may specify in its invitation to negotiate the county in which the facility would be located. When determining whether to authorize a destination resort located within a specific county or counties, the commission shall hold a public hearing in such county or counties to discuss the proposals and receive public comments on determination of the award of licenses.

After reviewing the replies to the invitation, the commission may select one or more replies and commence negotiations after determining which replies are in the best interest of the state, based on the selection criteria. The commission must award a resort license within 90 days after the deadline for submission of the applications.

Section 21: Specifies a number of minimum criteria the commission must use when evaluating resort license applications. Key criteria include:

- The applicant must demonstrate that it will expend at least $2 billion on new development and construction, excluding real estate, within the first five years of licensure issuance.
- No more than 10 percent of destination resort's square footage may be used for limited gaming.
- The applicant for a resort license must demonstrate that the resort will:
    - Increase tourism;
    - Generate jobs;
    - Provide revenue to the local economy; and
    - Provide revenue to the General Revenue Fund.
- Additionally, the applicant must demonstrate:

    - A history of, or a bona fide plan for, community involvement or investment in the community where the resort having a limited gaming facility will be located;
    - The financial ability to purchase and maintain an adequate surety bond;
    - Adequate capitalization to develop, construct, maintain, and operate the proposed resort and convention center in accordance with the act; and
    - The ability to implement a program to train and employ residents of this state for jobs that will be available at the destination resort, including its ability to implement a program for the training of low-income persons.
- The aesthetic appearance of the proposed resort, if the commission chooses to make this a consideration.
- The applicant must demonstrate how it will comply with state and federal affirmative action guidelines.
- The applicant must demonstrate the ability to generate substantial gross receipts.

This section requires the commission to evaluate applicants using the following weighted criteria:

- Design and location: 35 percent
- Management and expertise: 10 percent
- Speed to market: 35 percent
- Financial plan and access to capital: 10 percent
- Community plan: 10 percent

It is not clear how the weighted criteria would be applied in the context of specified criteria. For example, if the applicant does not demonstrate a minimum $2 billion expenditure as specified in the criteria, is the applicant disqualified or is that fact limited to determining the weighted 10 percent financial criteria? This may potentially make the applicant eligible for licensure even if the application does not demonstrate the minimum $2 billion expenditure.

The commission shall give preference to candidates who can show the following:

- Roads and utilities are adequate and the destination facility will not unduly impact public services;
- The ability to commence construction within one year; and
- The resort facility will be located in or adjacent to an area with some of the highest unemployment rates in the state.

This section of the bill also specifies that resort licenses will be issued "only to persons of good moral character who are at least 21 years of age."

A resort license will not be issued to any applicant, if such applicant, a qualifier, or an institutional investor:

- Has, within the last 5 years, been adjudicated by a court or tribunal for failure to pay income, sales, or gross receipts tax due and payable under any federal, state, or local law, after exhaustion of all appeals or administrative remedies;
- Has been convicted of a felony under the laws of any state or the United States;
- Has been convicted of any violation under ch. 817, F.S., related to fraudulent practices, or under a substantially similar law of another jurisdiction;

- Knowingly submitted false information in the application for the license;
- Is a member or employee of the commission;
- Was licensed to own or operate gaming or pari-mutuel facilities in this state or another jurisdiction and that license was revoked;
- Has accepted any wager on money from any online gambling activity from any state resident since October 13, 2006; or
- Fails to meet any other criteria for licensure set forth in the Resort Act.

In this context, the term "conviction" includes an adjudication of guilt on a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.

Section 22: Specifies the information that must be included in the application. The application must be sworn. Key required information includes:

- A description of the proposed resort, including a description of the anticipated economic benefit to the community, number of employees, a projection of attendance at the resort, a projection of gross receipts, and other information;
- Documentation, as required by the commission, that the applicant has received conceptual approval of the destination resort proposal from the municipality and county in which the resort will be located;
- Proof that the electors of the county where the resort is to be located have approved in a countywide referendum, prior to the application deadline, slot machine gaming, as defined in s. 551.102, F.S., or limited gaming;
- The time-frame for completing the resort;
- A plan for training Floridians for jobs at the resort;
- Identifying information about the applicant and all qualifiers, except those persons who specifically do not have to be identified, such as anyone with less than 5 percent interest in the resort project;
- Identification of elected officials, their spouses, and their children who, directly or indirectly, have any type of financial relationship with the applicant; and
- Fingerprints of the applicant, officers, qualifiers, and any person who will be responsible for operational controls.

The commission, however, may require by rule any other information in the application that the commission deems appropriate. The applicant has a responsibility to file a supplemental report to the application if there is any material change in any circumstance relevant to the commission's review of the proposal.

Each application must be submitted along with a $1 million non-refundable application fee to defray the commission's costs of reviewing it. If the review costs exceed $1 million, the applicant must remit the additional amount necessary to the commission within 30 days after a request.

Additionally, a one-time licensing fee of $50 million must be submitted along with the application, but this fee is refundable to the applicant within 30 days if the commission denies the application. If the applicant withdraws after the application deadline, the commission has to refund 80 percent of the licensing fee, also within 30 days.

Section 23: Provides that an incomplete application is grounds for denial of an application. However, if the commission determines that an application is incomplete, the applicant may request an informal conference with the executive director or his designee. The executive director may grant a 30-day extension to complete an application. If the executive director still finds the application incomplete, the applicant may appeal to the commission – at which point, the issuance of licenses is stayed until the commission rules on the appeal.

Section 24: Provides a limited application process for institutional investors, generally defined as pension funds, public retirement funds, insurance companies, financial institutions, or trusts that hold less than 15 percent of the equity securities or 15 percent of the debt securities of an applicant or affiliate of the applicant, and are a publicly traded corporation. Institutional investors must file a certified statement that they do not intend to influence or affect the affairs of the applicant or its affiliate, and that the securities of the applicant or affiliate that it holds were purchased for investment purposes only. The commission may limit the application process for qualifiers who hold less than five percent upon a showing of good cause. In addition, the commission may require that an institutional investor be treated as a qualifier if it finds that such investor is in a position to exercise a substantial impact upon the controlling interests of a licensee.

Section 25: Exempts lenders and underwriters as qualifiers from a requirement to be licensed.

Section 26: Establishes several conditions for obtaining or renewing a resort license. The key conditions require that the licensee:

- Comply with the Resort Act and rules of the commission;
- Allow the commission and FDLE unlimited access to and the right of inspection for the areas of the resort where limited gaming activities occur;
- Complete the resort in accordance with the plans and timeframe submitted to the commission in the proposal, unless a waiver has been granted;
- Ensure that the facilities-based computer system is operational and that all accounting functions are structured to facilitate regulatory oversight, which shall require the systems to provide for real-time information to the commission and FDLE;
- Ensure that each game, machine, or device is protected from tampering or manipulation;
- Submit and comply at all times with a detailed security plan;
- Create and file with the commission a written policy for:
    - Creating opportunities to purchase from vendors from this state;
    - Creating opportunities for employment of residents of this state;
    - Ensuring opportunities for hiring construction services from vendors in this state;
    - Ensuring opportunities for employment are on an equal, nondiscriminatory basis;
    - Training employees on responsible gaming and work with a compulsive or addictive gambling prevention program;
    - Implementing a drug-testing program for each occupational licensee that includes, but is not limited to, requiring such person to sign an agreement that he or she understands that the resort is a drug-free workplace;
    - Using the Internet-based job-listing system of the Department of Economic Opportunity in advertising employment opportunities; and

- Ensuring that each slot machine pays out at least 85 percent.

In addition, the resort must keep and maintain permanent, daily records of its gaming operations for not less than 5 years.

Section 27: Requires each destination resort licensee to maintain a surety bond, at its own cost and expense. The penal sum of the bond is to be determined by the commission and payable to the Governor. The commission shall set the bond at the total amount of license fees and taxes estimated to become due for the resort. In lieu of a bond, a licensee may instead pay a like amount of funds to the commission.

Section 28: Provides that limited gaming may be conducted at a licensed resort, but only within a designated area of the resort as approved by the commission. Limited gaming activities may not begin until the resort is completed in accordance with the proposal approved by the commission. The resort licensee may only accept wagers from persons at least 21 years of age who are present in the facility, and may set the amount of wagers. The facility may not accept wagers using money, except for slot machine gaming. The gaming facility may be open 24 hours per day, 365 days per year.

Section 29: Requires each licensee to pay the commission a $2 million annual license fee due on the anniversary date of its resort license. The license fee shall be deposited in the Destination Resort Trust Fund to be used by the commission and FDLE for investigations, regulation of resorts, and enforcement.

In addition, each resort licensee is required to pay a 10 percent gross receipts tax on the gross receipts for limited gaming activities at the resort. Once the resort is complete, the licensee must submit all information, as required by the commission, to determine the infrastructure investment and to set the tax rate for the resort. The effect of this provision is unclear because the tax rate would be fixed for each licensee, which is not dependent of the amount of infrastructure investment. This tax is in lieu of any other state tax on gross or adjusted gross receipts from a resort licensee.

Proceeds of the gross receipts tax will be deposited in the Destination Resort Trust Fund and shall be used to fund the commission's operating costs, pursuant to legislative appropriation. However, on June 30 of each year, all unappropriated revenues in excess of $5 million must be deposited in the General Revenue Fund.

Section 30: Requires that FDLE implement the fingerprint requirements, and shall submit the results to the commission. The costs of the fingerprinting and background checks shall be borne by the applicant.

Additionally, all the fingerprints must be entered into the statewide database, as authorized in s. 943.05(2)(b), F.S., and available for all specified purposes. The fingerprints also may be forwarded to the FBI.

Any applicant who is fingerprinted and who has been convicted or pleaded guilty or nolo contendere to a disqualifying offense must notify the commission within 48 hours.

Section 31: Requires suppliers' licenses in order to furnish, on a regular or continuing basis, gaming equipment, supplies, devices, or goods or services to a destination resort licensee relating to limited gaming. Each applicant and licensee must pay an annual license fee not to exceed $25,000. A person is not eligible for a suppliers' license if the person has committed a felony, knowingly submitted false information to the commission, the applicant is a member of the committee, the applicant is not a natural person, or the applicant has a resort license or pari-mutuel license in either this state or any other jurisdiction.

All applicants for suppliers' licenses must submit to background investigations and comply with the fingerprint requirements in the act.

The bill authorizes the commission to revoke a license for a violation of the act and commission rules.

Section 32: Provides that any person who wishes to become a gaming employee, as defined in s. 551.301(14), F.S., must apply to the commission for an occupational license; no person may be employed by a resort licensee until that person has an occupational license. The application fee must be set by the commission, but an employee occupational license fee may not exceed $250. Occupational licensees must be at least 21 years old to perform gaming related functions and at least 18 to perform non-gaming related functions.

All applicants for occupational licenses must submit to background investigations and comply with the fingerprint requirements in the act. An occupational license is valid for four years. The bill authorizes the commission to revoke a license for a violation of the act and commission rules. A person who has committed a felony or crime involving dishonesty or moral turpitude in any jurisdiction is not eligible for an occupational license.

Section 33: Provides that the commission's executive director may grant temporary suppliers and occupational licenses, under certain conditions. The temporary license expires after 90 days.

Section 34: Requires the commission to submit quarterly reports to the Governor, President of the Senate, and Speaker of the House of Representatives. The reports must include:

- A statement of receipts and disbursements related to limited gaming;
- A summary of disciplinary actions taken by the commission; and
- Any additional information or recommendations that the commission believes may improve the regulation of limited gaming or increase the economic benefits of limited gaming to this state.

Section 35: Establishes guidelines for patron disputes with licensees. If a patron dispute involves alleged wins, losses, payments of cash, prizes, benefits, tickets, or other items, or a dispute that involves the manner in which a game, tournament, contest, drawing, promotion, race or similar activity was conducted, cannot be resolved to the satisfaction of the patron, the licensee must immediately notify the commission if the dispute involves at least $500.

If the dispute involves less than $500, the licensee must notify the patron of the patron's right to file a complaint with the commission.

The commission may investigate the matter and may require the licensee to pay restitution to the patron. Failure to notify the commission of a dispute or to notify a patron of his or her right to file a complaint constitutes grounds for disciplinary action against the resort licensee.

Section 36: Permits the use of credit instruments, instead of cash, by patrons. Resort licensees may accept incomplete credit instruments if they are signed by the patron and the amount is completed in numbers; the resort licensee may complete the incomplete instrument. The resort licensee also may accept a credit instrument payable to an affiliate of the licensee. In addition, the resort licensee may accept the credit instrument before, during, or after the patron has incurred the debt with the resort.

However, the bill also allows patrons to establish an account by a cash deposit, recognized traveler's check, or any other credit instrument that is equivalent to cash.

The bill also establishes that a patron's mental disorder is not a defense against paying the debt; nor does the failure of a resort to comply with all of the requirements of this section erase the debt.

The commission is authorized to adopt rules to address the credit instrument provisisions.

Section 37: Requires each resort licensee to train employees on responsible gaming and to work with a program on responsible gambling to recognize problem gambling. The commission is required to contract for services related to the prevention of compulsive and addictive gambling. The contract for the services must require advertising of responsible gambling and the publication of a gambling telephone help line. Each resort licensee is required to fund the program with a $250,000 annual fee.

Section 38: Provides that a person may request to be excluded from all limited gaming facilities by completing a self-exclusion form and submitting it to the commission. The form requires the patron to include his or her name, date of birth, and other identifying information. The form also requires the individual to indicate how long he or she wishes to be excluded from the limited gaming facilities.

Section 39: Provides that the limitation on the number of alcoholic beverage quota licenses shall not apply to a resort licensee. Notwithstanding any other section of law, a resort licensee can sell or serve alcoholic beverages for consumption on the premises. Resort licensees must pay an annual license fee of $50,000 for the alcoholic beverage license and may serve alcohol 24 hours per day.

Section 40: Amends s. 849.15, F.S., to reference the Resort Act.

Section 41: Amends s. 849.231, F.S., to exempt the limited gaming at destination resorts and at currently licensed slot-machine licensees from the statutory prohibition against possession of gambling devices in Florida.

Section 42: Amends s. 849.25, F.S., to correct cross-references and to exempt the limited gaming at destination resorts from the statutory prohibition against bookmaking.

Section 43: Creates s. 849.48, F.S., to require that each person, firm, association, partnership, or corporate entity that seeks to operate a gambling business or to allow gambling to occur on its premises must obtain a license from the department. In addition, any person, firm, association, partnership, or corporate entity owning, leasing, furnishing, manufacturing, distributing, or operating gambling devices must obtain a license from the Department of Gaming Control.

This section requires the applicant to apply for an annual license, which fee shall not exceed $5,000. A license may only be issued to persons who are at least 18 years of age. If a license is lost or destroyed, a duplicate license may be issued for a $150 fee. This section appears to require any person who is not currently licensed by the state to obtain a license from the department if they allow gambling to occur on their property. This requirement could potentially apply to the conduct of penny-ante games, bingo halls, Internet cafes, arcade amusement centers, lottery retailers, and other gambling authorized under ch. 849, F.S.

Section 44: Transfers the administration of chs. 550, 551, and 849, F.S., of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation to the Department of Gaming Control 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 of the Department of Business and Professional Regulation to the Department of Gaming Control.

Section 45: Provides that the Department of Gaming Control 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 of the Department of Business and Professional Regulation.

Section 46-73: Corrects cross references to properly reflect the name of the Department of Gaming Services, Division of Licensure, and to clarify that the regulation of pari-mutuel wagering, slot machine gaming, and cardrooms are within the jurisdiction of the Department of Gaming Services.

Section 57: Amends the definition of "eligible facility" for slot machine licensees to include any facility located in a county as defined by s. 125.011, F.S., provided that the facility has conducted two calendar years of live racing *or games* for two calendar years immediately preceding its application for a slot machine license.

Section 74: Provides a severability clause.

Section 75: Provides that except as otherwise expressly provided, the effective date of the act is July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A public records bill, SB 714, is linked to this bill.

C. Trust Funds Restrictions:

A trust fund bill, SB 712, is linked to this bill.

D. Other Constitutional Issues:

The Florida Constitution is silent on the subject of casino gaming. However, the Florida Constitution does not prohibit the Legislature from creating laws to authorize, regulate, or tax gaming in the state. With regard to gaming, the Florida Constitution only addresses the subjects of lotteries and slot machine gaming. The Florida Constitution prohibits lotteries, except pari-mutuel pools permitted by state law,[38] but specifically allows for state operated lotteries.[39]

Even though the Florida Constitution does not specifically prohibit any form of gaming other than lotteries that are not state operated, the provision that expanded the pari-mutuel locations that can offer slot machine gaming is being challenged as violating Art. X, s. 23, Florida Constitution. These lawsuits challenge the Legislature's authority to authorize slot machine gaming outside the pari-mutuel facilities enumerated in Art. X, s. 23, of the Florida Constitution, as provided in ch. 2009-170, L.O.F.,[40] which references pari-mutuel facilities that were existing and had conducted live racing or games in that county during each of the last 2-calendar years before the effective date of the amendment (2004). The trial court[41] and the First District Court of Appeals have upheld the constitutionality of this provision.[42] That decision is on appeal to the Florida Supreme Court.

Section 551.327, F.S., provides that gaming related disputes may only be resolved by the Department of Gaming Control and are not under the jurisdiction of state courts. This provision may implicate concerns related to the constitutional right of access to courts.

[38] Section 7, Art. X, Florida Constitution.
[39] Section 15, Art. X, Florida Constitution.
[40] Chapter 2009-170, L.O.F., became effective on July 1, 2010 by s. 4, ch. 2010-29, L.O.F.
[41] *See* Order on Plaintiff's Motion for Summary Judgment, consolidated cases, *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, No. 2010 CA 2257 and *Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, No. 2010 CA 2132 (Fla. 2d Cir. Ct. December 14, 2010).
[42] *See Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D11-130 (Fla. 1st DCA) and *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D10-6780 (Fla. 1st DCA).

Article I, s. 21, Florida Constitution, provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." No similar provision exists in the federal constitution. If the Legislature asserts a valid public purpose, it can restrict access to the courts as long as it provides a reasonable alternative to litigation. For example, in *Lasky v. State Farm Ins. Co.*,[43] the Florida Supreme Court upheld the constitutionality of the state's no-fault automobile insurance statute, although the statute restricted access to the courts. Unless medical expenses reached a certain level, the statute restricted an injured party from bringing a tort action to recover for pain and suffering. The court reasoned that because the statute required every owner of a motor vehicle to obtain insurance, a reasonable alternative to traditional tort actions was available. The court concluded that the statute did not deprive the appellants of their right to a trial by jury because it only abolished the right of recovery in narrow circumstances where it left "nothing to be tried by jury."[44] Alternatively, requiring mandatory arbitration of medical expense claims under the no-fault law is an unconstitutional denial of access to courts.[45]

The Florida Supreme Court has held that citizens possess a right to a jury trial in civil forfeiture actions instituted under the Florida Contraband Forfeiture Act.[46] The court has determined that Article I, s. 22, Florida Constitution guarantees the right to trial by jury in all actions "in which the right was enjoyed at the time this state's first constitution became effective in 1845."[47] The court construed the right in a broad fashion, explaining, "[i]t is the nature of the controversy between the parties, and its fitness to be tried by a jury . . . that must decide the question."[48]

In *Broward County v. La Rosa*,[49] the Florida Supreme Court invalidated a county ordinance which empowered a local administrative agency to award damages to victims of race discrimination. The court found that the ordinance violated both Article I, Section 22 (trial by jury), and Article II, Section 3 (separation of powers). The court stated, "although the Legislature has the power to create administrative agencies with quasi-judicial powers, the Legislature cannot authorize these agencies to exercise powers that are fundamentally judicial in nature . . . we cannot imagine a more purely judicial function than a contested adjudicatory proceeding involving disputed facts." *Id*. at 423.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Applicants for a destination resort license would pay an application fee of $1 million dollars to defray the costs of investigating and reviewing the application.

[43] *Lasky v. State Farm Ins. Co*., 296 So.2d 9 (Fla. 1974).
[44] Id. at 22. *See generally* Mark M. Hager, *No Fault Drives Again: A Contemporary Primer*, 52 U. Miami L. Rev. 793 (1998).
[45] *Nationwide Mut. Fire Ins. Co. v. Pinnacle Medical, Inc.*, 753 So.2d 55 (Fla. 2000).
[46] *In re Forfeiture of 1978 Chevrolet Van*, 493 So.2d 433 (Fla. 1986).
[47] *Id*. at 434.
[48] *Id*. at 435.
[49] *Broward County v. La Rosa*, 505 So.2d 422 (Fla. 1987).

The application also must include a one-time licensing fee of $50 million, which the commission must refund within 30 days of denying an application. If an applicant withdraws its application after the application deadline, the commission must refund 80 percent of the licensing fee within 30 days after the application is withdrawn.

Each resort licensee would be required to pay $2 million annually to the commission as a license fee. In addition, each resort licensee would pay a gross receipts tax of 10 percent of the gross gaming revenues generated at the resort.

Suppliers' licensees would be required to pay an annual license fee of $25,000, while the fee for an occupational licensee may not exceed $250.

The state's Revenue Estimating Conference met on December 9, 2011 and estimated that the bill would generate an indeterminate but positive fiscal impact for the state. The report stated:

> While reasonable estimates can be made of the revenue impact associated with the establishment of three destination resorts, numerous assumptions must be incorporated. These assumptions magnify over time and exponentially increase the risk to the estimates being achieved in specific fiscal years. They include the ultimate number of awarded licensees, the business models used by the facilities, their general locations, and the precise timing of events until the commencement of gaming operations. Assuming that three licenses are awarded with at least one of the facilities located outside Miami-Dade and Broward counties and that the timeline used in the analysis can be met in all aspects, increased state and local revenues would achieve at least the following levels: $155 million in FY 2012-13; $60.6 million in FY 2013-14; $102.9 million in FY 2014-15; and $137.2 million in FY 2015-16.

During a presentation to the Regulated Industries Committee, the representative from Genting Americas supplied letters dated November 15, 2011,[50] from two gaming research groups that indicated that three destination resorts located in south Florida could generate upwards of $4.3 billion in gaming revenue per year.

B. Private Sector Impact:

The industry estimates that three resorts, if authorized by the commission, would create 100,000 jobs, including construction and temporary jobs. The industry estimates that the three resorts, if built, would attract over four million out-of-market visitors. In addition, the industry has indicated that the overflow and increase in tourism would have a positive impact on other area attractions, restaurants, and lodging.

C. Government Sector Impact:

Indeterminate. However, the bill authorizes fees projected to be sufficient to pay the costs of administering the act.

[50] Letters on file with the Senate Committee on Regulated Industries.

VI. Technical Deficiencies:

None.

VII. Related Issues:

State revenue-sharing with the Seminole Indian Compact relies on continued exclusivity of casino-style and Class III gaming. The authorization for full commercial casinos would constitute a casino style and Class III gaming expansion and would affect the revenue-sharing payments that the Tribe is required to make to the state under the compact. Any cessation or reduction of revenue sharing payments upon the expansion of casino gaming would depend on the location of the new casinos. It should be noted that any cessation or reduction of revenue sharing payments would only occur when the first Class III or other casino-style game is played. The mere authorization of Class III gaming or other casino-style gaming would not affect the payments.[51]

It should be noted that the state's expansion of Class-III gaming or casino-style gaming would not mean that the state had violated its compact with the Tribe. The compact specifies the consequences, particularly the financial ramifications, if the state elects to expand gaming in this state, and does not expressly prohibit any such expansion. The compact term is for 20 years.

If the commission approves a destination resort with limited gaming in any location outside of Miami-Dade and Broward Counties, all of the Tribe's revenue-sharing payments would stop once the first game is played.[52] If the Commission approves a destination resort with limited gaming inside of Miami-Dade and Broward Counties, but the location is not at a pari-mutuel facility, the Tribe would continue to make revenue-sharing payments, but the Tribe would exclude the net win from their Broward facilities. According to the Division of Pari-mutuel Wagering, the net win from the Tribe's Broward facilities equals approximately 47 percent of the Tribe's total net win. Therefore, if casino-style gaming were expanded and limited to Miami-Dade and Broward Counties, the Tribe's payments would be reduced by approximately 47 percent.

In addition, if the destination resort with limited gaming is authorized for any location in Miami-Dade or Broward counties within the first 5 years of the compact, the guaranteed minimum payment and the $1 billion guarantee for the first 5 years of the compact would no longer apply. The Tribe's payments would be based on the applicable percentage of net win.

Once the new gaming begins at licensed destination resorts, the Tribe may continue to offer the covered games authorized in the compact plus any additional games that are authorized for the destination resorts.[53] However, the Tribe would have to negotiate a new compact at the end of the current compact's term before it could continue to offer the covered games.[54]

[51] *See* Part XII., *Gaming Compact, supra n. 27*.
[52] *See* Part XII. A., *Gaming Compact, supra n. 27*.
[53] *See* the definition of covered games at Part III.F.4., *Gaming compact, supra* at n. 27.
[54] IGRA at 18 U.S.C. s. 2710(d)(1)(C).

VIII. Additional Information:

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

None.

B. Amendments:

None.