

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1233 Gaming

SPONSOR(S): Regulatory Affairs Committee; Young

TIED BILLS: HB 1235, HB 1237 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Affairs Committee	14 Y, 4 N, As CS	Anstead	Hamon
2) Finance & Tax Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill makes changes to the pari-mutuel wagering chapter, ch. 550, F.S., the slot machines chapter, ch. 551, F.S., and the gambling chapter, ch. 849, F.S., related to operating requirements for pari-mutuel wagering permitholders and specifically removes the current requirement for greyhound racing permitholders to conduct live greyhound races in order to conduct pari-mutuel wagering activities, cardrooms and slots.

Those changes include:

- Permitting greyhound permitholders to conduct pari-mutuel wagering, cardrooms and slots without the requirement of live races;
- Providing for the revocation of dormant permits based on a permitholders failure to conduct live races, obtain an operating license, or failing to pay taxes on handle for a period of more than two years;
- Prohibiting the issuance of new or additional permits, and prohibiting the conversion or relocation of permits;
- Prohibiting the transfer or relocation of a pari-mutuel permit or license;
- Limiting the number of pari-mutuel wagering operating licenses to no more than 40;
- Prohibiting the issuance of additional summer jai alai permits;
- Removing tax credits for greyhound permitholders and revising the tax on handle for live greyhound racing and intertrack wagering from 5.5% to 1.28%;
- Removing provisions that allow for reissuance of permits after they escheat to the state;
- Revising purse requirements of a greyhound permitholder that conducts live racing;
- Repealing s. 550.1647, F.S., relating to tax credits for unclaimed greyhound racing wagers;
- Revising the requirements for a greyhound permitholder to provide a greyhound adoption booth at its facility and requiring sterilization of greyhounds before adoption;
- Creating s. 550.2416, F.S., requiring injuries to racing greyhounds be reported to the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation;
- Requiring greyhound permitholders to offer certain simulcast signals if offering intertrack wagering;
- Revising the number of days from 15 to 8 that a limited thoroughbred horse sales permitholder is required to offer sales in order to obtain a limited intertrack wagering license;
- Extending weekday hours of operation for all slot machine and cardroom licensees from 18 to 24 hours;
- Streamlining the slot machines chapter and limiting the issuance of slot machine licenses;
- Conditionally allowing slot machines at pari-mutuel facilities that have conducted 250 performances per year for 25 years, if the Seminole Gaming Compact is amended to allow for such facilities to operate;
- Providing for a referendum or commission vote in Miami-Dade and Broward Counties to determine support for legislative approval of destination resort casinos in those areas.

The bill is expected to have a fiscal impact on state funds; however a fiscal analysis is unavailable at this time.

The bill provides for an effective date upon coming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Overview of Gaming in Florida

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

Section 7 of Article X of the 1968 State Constitution provides, "Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state."¹

Section 15 of Article X of the State Constitution (adopted by the electors in 1986) provides for state operated lotteries:

Lotteries may be operated by the state.... On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.²

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

After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed pari-mutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such pari-mutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

Pari-mutuel wagering

Chapter 550, F.S., regulates the conduct of pari-mutuel wagering on horseracing, greyhound racing and jai alai and licensed pari-mutuel facilities. Section 849.086, F.S., authorizes cardrooms at such facilities and ch. 551, F.S., authorizes slot machines at such facilities, provided additional eligibility criteria are met. Such gaming is overseen by the Division of Pari-mutuel Wagering (DPMW) within the Department of Business and Professional Regulation (DBPR). Its purpose is to ensure the health, safety, and welfare of the public, racing animals, and licensees through efficient, and fair regulation of the pari-mutuel industry in Florida.³

¹ 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.

² The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., creates the Department of the Lottery and states the Legislature's intent that it be self-supporting and revenue-producing and function as an entrepreneurial business enterprise.

³ From 1932 to 1969, Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within DBPR, and, in 1993, the Department of Business Regulation became the DBPR.

The DPMW collects revenue in the form of taxes and fees from permitholders for the conduct of gaming activities outlined above. Additionally, the DPMW is the State Compliance Agency for oversight of the gaming compact with the Seminole Tribe. As part of the DPMW's oversight duties, it collects and verifies payments by the Seminole Tribe made to the State of Florida under the terms outlined in the Compact.

The DPMW currently makes an annual report to the Governor showing its actions, money received under Chapter 550, F. S., the practical effects of Chapter 550, and any suggestions for more effective accomplishment of the goals of the chapter.⁴

Miscellaneous Gaming

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, bingo, penny-ante poker, arcade amusement games, amusement games and machines, and game promotions. Such gaming is primarily enforced by local law enforcement, although the Department of Agriculture and Consumer Services (DOACS) and the Department of Legal Affairs (DLA) has limited authority.

Indian Gaming

Gambling on Indian lands is subject to federal law, with limited state involvement. Florida entered a compact governing such gambling with the Seminole Tribe of Florida in 2010 (Seminole Gaming Compact). Such gaming compacts are regulated by the federal Indian Gaming Regulatory Act, s, 25 U.S.C. 2701, et seq., and part II, ch. 285, F.S. The DPMW, as the State Compliance Agency under the Seminole Gaming Compact, has an oversight role in ensuring gaming at the Tribe's facilities is conducted in compliance with the compact.

The Seminole Gaming Compact permits the Tribe to offer slot machines, raffles and drawings, and any other game authorized for any person for any purpose, at all seven of its tribal casinos. It also 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 Brighton or Big Cypress facilities. If banked games are authorized for any other person for any other purpose, except for a compact with a qualifying Indian Tribe, the Tribe would be authorized to offer banked cards at all seven of its facilities.

The Seminole Gaming Compact has a term of 20 years, with the exception of the authorization for banked card games which lasts five years (until July 31, 2015), unless renewed by an affirmative act of the Legislature.

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, 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 three, \$233 million for year four, and \$234 million for year five.
- After the initial period, the Tribe pays the greater of the guaranteed minimum or payments based on a variable percentage of annual net win that ranges 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 five years, the Tribe will continue to make payments to the state based on the percentage of net win without a guaranteed minimum payment.

If the Legislature does not extend the authorization for banked card games after the first five years, the net win calculations would exclude the net win from the Tribe's facilities in Broward County.

⁴ s. 550.0251(1), F.S.
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Revenues are deposited in the General Revenue Fund.

The compact provides consequences for the expansion of gaming in Miami-Dade and Broward counties:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuel facilities located in Miami-Dade and Broward counties (which may not relocate) and the net win from the Tribe's Broward facilities drops for the year after the new gaming begins, then the Tribe may reduce the payments from its Broward facilities by 50 percent of the amount of the reduction in net win.
- If new forms of Class III gaming and other casino-style gaming are authorized for other locations in Miami-Dade and Broward counties, then the Tribe may exclude the net win from their Broward facilities from their net win calculations when the new games begin to be played.⁵

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.

Current Situation of Pari-Mutuel Wagering

'Pari-mutuel wagering' refers to a method of wagering in which winners divide the total amount bet in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes.⁶ In Florida, pari-mutuel wagering is authorized on jai alai, greyhound racing and various forms of horseracing and overseen by the DPMW. Chapter 550, F.S., provides specific licensing requirements, taxation provisions, and regulations for the conduct of the industry.

Pari-mutuel wagering activities are limited to operators who have received a permit from the DPMW, which is then subject to ratification by county referendum. Permitholders apply for licenses annually to conduct pari-mutuel wagering activities,⁷ cardrooms,⁸ and slot machines.⁹

Horse racing was authorized in the State of Florida in 1931. The state authorizes three forms of horse racing classes for betting: thoroughbred, harness, and quarter horse 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. Harness racing uses standard bred horses, which are a "pacing or trotting horse...that has been registered as a standardbred by the United States Trotting Association" or by a foreign registry whose stud book is recognized by the USTA.¹⁰ Quarter horse racing involves horses developed in the western United States which are capable of high speed for a short distance.¹¹ They are registered with the American Quarter Horse Association.

The DPMW approves pari-mutuel wagering permits. Generally, as long as the applicant meets statutory minimum requirements, the DPMW issues the permit. There is no application fee. While the DPMW is authorized to charge applicants for its investigation, it has not done so in recent years. It determines eligibility using existing resources.

⁵ The Tribe would automatically be authorized to conduct the same games authorized for any other person at any location.

⁶ s. 550.002(22), F.S.

⁷ s. 550.0115, F.S.

⁸ s. 849.086, F.S.

⁹ s. 551.104, F.S.

¹⁰ s. 550.002(33), F.S.

¹¹ s. 550.002(28), F.S.

The DPMW has issued 50 pari-mutuel wagering permits, and 5 non-wagering permits. There are 35 pari-mutuel permitholders currently operating at 29 facilities throughout Florida.¹² Currently, 24 pari-mutuel facilities are operating cardrooms. There are seven pari-mutuel facilities that have been licensed to operate slot machines. Several locations have multiple permits that operate at a single facility. The breakdown by permit type is as follows:

- 19 Greyhound permits
- 5 Thoroughbred permits
- 1 Harness permit
- 5 Quarter Horse permits
- 8 Jai-Alai permits
- 1 track offering limited intertrack wagering and horse sales

Permit revocation

Under certain circumstances in statute, a permitholder may lose his or her permit to conduct pari-mutuel wagering. If a permitholder has failed to complete construction of at least 50 percent of the facilities necessary to conduct pari-mutuel wagering within 12 months after approval by the voters of the permit, the DPMW shall revoke the permit after giving adequate notice to the permitholder.¹³ The DPMW may grant one extension of 12 months upon a showing of good cause by the permitholder.

If a permitholder fails to pay tax on handle for live thoroughbred horse performances for a full schedule of live races for two consecutive years, his or her permit is void and escheats back to the state, unless the failure of payment was due to events beyond the control of the permitholder.¹⁴ Financial hardship to the permitholder does not, in and of itself, constitute just cause for the failure to pay taxes in this section. There is a similar requirement for harness racing permitholders in s. 550.9512(3)(a), F.S. In the case of failure to pay taxes, the permit escheats to the state and may be reissued.

Relocation

Certain permitholders may relocate the location listed in their permit to a new location within 30 miles. Greyhound and jai alai permitholders operating in counties where they are the only permitholder of that class may relocate under s. 550.0555, F.S. Greyhound permitholders that converted their permit from a jai alai permit under s. 550.054, F.S., may relocate under that statute. A greyhound permitholder in a county where it is the only permitholder who operates at a leased facility may also relocate under s. 550.054, F.S.

In each of these cases, the relocation must not cross county boundaries and must be approved under the local zoning regulations. In relocation under s. 550.054, F.S., the DPMW is required to grant the application for relocation once the permitholder fulfills the requirements of the statute. Approval by the DPMW is required for relocations under s. 550.0555, F.S.

Conversion

Certain permitholders may convert their permits, for instance, a permit for pari-mutuel wagering on jai alai may be converted to greyhound racing if the permitholder meets certain criteria.¹⁵ In the past, quarter horse permits have been converted to limited thoroughbred permits,¹⁶ jai alai to greyhound racing,¹⁷ etc.

¹² Florida Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering, *83rd Annual Report Fiscal Year 2013-2014*, <http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2013-2014--83rd--20150114.pdf>

¹³ s. 550.054(10), F.S.

¹⁴ s. 550.09515(3)(a), F.S.

¹⁵ s. 550.054(14), F.S., ruled an unconstitutional act by *Debary Real Estate Holdings, LLC v. State, Dept. of Business and Professional Regulation, Div. of Pari-Mutuel Wagering*, 112 So.3d 157, 168 (Fla. 1st DCA 2013).

¹⁶ See s. 550.3345, F.S.

¹⁷ ch. 89-219, Laws of Fla.

Permitholders may also convert to conduct summer jai alai, in certain circumstances.¹⁸ This provision, enacted in 1980, has been subject to competing interpretations. The bill enacting the provision included in a whereas clause a finding that "it would be to the best interests of the state to permit summer jai alai *so long as there is no increase in the number of permittees authorized to operate* within any specified county." The DPMW issued one summer jai alai permit in Miami-Dade County in 2011 and has received numerous applications for Miami-Dade and Broward counties. The provision provides:

If a permitholder that is eligible under this section to convert a permit chooses not to convert, a new permit is made available in that permitholder's county to conduct summer jai alai games as provided by this section, notwithstanding mileage and permit ratification requirements. If a permitholder converts a quarter horse racing permit pursuant to this section, this section does not prohibit the permitholder from obtaining another quarter horse racing permit.

If the provision is interpreted to provide for the issuance of a new permit, it could be used to issue new permits as often as every two years.

Intertrack wagering

Wagering on races hosted at remote tracks is called intertrack (when both tracks are in Florida) or simulcast (when one track is out of state) wagering. In-state 'host tracks' conduct live or receive broadcasts of simulcast races that are then broadcast to 'guest tracks,' which accept wagers on behalf of the host. To conduct intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing and meet other requirements.¹⁹

A limited amount of intertrack wagering is also authorized by statute for one permanent thoroughbred sales facility.²⁰ In order to qualify for a license, the facility must have at least 15 days of thoroughbred horse sales at a permanent sales facility in this state for at least three consecutive years. Additionally, the facility must have conducted at least 1 day of nonwagering thoroughbred racing in this state, with a purse structure of at least \$250,000 per year for 2 consecutive years before application for a license.

A limited intertrack wagering licensee is limited to conducting intertrack wagering during:

- The 21 days in connection with thoroughbred sales;
- Between November 1 and May 8;
- Between May 9 and October 31, if:
 - No permitholder within the county is conducting live events.
 - Permitholders operating live events within the county consent.
 - For the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet.

The licensee is further limited to intertrack wagering on thoroughbred racing, unless all permitholders in the same county consent. The licensee must pay 2.5 percent of total wagers on jai alai or greyhound racing to thoroughbred permitholders operating live races for purses.

Cardrooms

Cardrooms were authorized at pari-mutuel facilities in 1996.²¹ Cardrooms can only be offered at a location where the permitholder is authorized to conduct pari-mutuel activities. To be eligible for a cardroom license, permitholders must conduct at least 90% of the performances conducted the year

¹⁸ s. 550.0745, F.S.

¹⁹ See s. 550.615, F.S.

²⁰ s. 550.6308, F.S.

²¹ s. 20, Ch. 96-364, Laws of Fla.

they applied for the initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances.

The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. No-limit poker games are permitted. Such games are played in a non-banking matter, i.e., the house has no stake in the outcome of the game. Cardrooms must be approved by an ordinance of the county commission where the pari-mutuel facility is located. Each cardroom operator must pay a tax of 10 percent of the cardroom operation's monthly gross receipts.

Effect of Proposed Changes to Pari-Mutuel Wagering

The Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation

The bill amends s. 550.0251, F.S., providing that the DPMW shall make an annual report to the President of the Senate, and the Speaker of the House of Representatives, in addition to current law that requires an annual report to the Governor. The report shall include, at a minimum:

- Recent events in the gaming industry, including pending litigation, pending facility license applications, and new and pending rules.
- Actions of DBPR relative to the implementation and administration of ch. 550, F.S.
- The state revenues and expenses associated with each form of authorized gaming. Revenues and expenses associated with pari-mutuel wagering shall be further delineated by the class of license.
- The performance of each pari-mutuel wagering licensee, cardroom licensee, and slot licensee.
- A summary of disciplinary actions taken by DBPR.
- Any suggestions to more effectively achieve the purposes of ch. 550, F.S.

Permit applications

The bill provides that, effective upon becoming law, the DPMW may not approve or issue any new permit authorizing pari-mutuel wagering. The bill also limits the number of pari-mutuel wagering operating licenses that may be issued by the DPMW to permitholders to no more than 40.

Permit revocation

The bill provides additional basis for the division to revoke a permit:

- If a permitholder has failed to obtain an operating license to conduct live events for a period of more than 24 consecutive months.
- If a permitholder has failed to conduct live performances within the 24 months prior to the effective date of the bill.
- If a permitholder fails to pay taxes on handle for more than 24 consecutive months. This extends the existing requirement relative to thoroughbred and harness racing permits to all pari-mutuel wagering permits.

The bill specifies that permits revoked under these situations are void and may not be reissued.

The bill provides that approval may be obtained upon a request to place a permit in inactive status for up to 24 months. While in inactive status, the permitholder is ineligible for licensure for pari-mutuel wagering, cardrooms or slot machines.

Relocation

The bill repeals all relocation provisions.

Conversion

The bill repeals all conversion provisions.

Intertrack wagering

The bill reduces requirements for a limited intertrack wagering license:

- The number of days for public sales of thoroughbred horses is reduced from 15 to 8.
- The requirement to conduct at least one day of nonwagering racing is removed.
- Some restrictions on the conduct of intertrack wagering are removed.
- The requirement to obtain consent of other county permitholders to accept intertrack wagers on non-thoroughbred events is removed.

Greyhound racing

The bill removes the live racing requirement for greyhound racing permitholders and makes changes throughout ch. 550, F.S., related to a greyhound permitholders ability to operate pari-mutuel wagering, cardrooms, and slots without live racing. The greyhound permitholders are given the option to continue to conduct live performances or conduct no live performance.

The bill includes the following changes:

- Removes all tax credits for greyhound permitholders and revises the tax on handle for live greyhound racing and intertrack wagering from 5.5% to 1.28%;
- Repeals s. 550.0555, F.S., which allowed the relocation of greyhound racing permits;
- Repeals s. 550.1647, F.S., relating to tax credits for unclaimed tickets at greyhound facilities;
- Revises the requirements for a greyhound permitholder to provide a greyhound adoption booth at its facility, defines the term "bona fide organization that promotes or encourages the adoption of greyhounds," and requires sterilization of greyhounds before adoption;
- Creates s. 550.2416, F.S., requiring injuries to racing greyhounds be reported on a form adopted by the DPMW within a certain timeframe and specifying information that must be included in the form. It requires the DPMW to maintain the forms as public records for a specified time and specifies disciplinary action that may be taken against a licensee of DBPR who fails to report an injury or who makes false statements on an injury form.
- Requires greyhound permitholders to offer certain simulcast signals if offering intertrack wagering.
- Requires certain greyhound permitholders to locate their slot machine gaming area in certain locations and extends the hours of operation for all slot machine licensees from 18 to 24 hours 7 days a week.
- Provides that a greyhound permitholder is not required to conduct a minimum number of live racing in order to receive, maintain, or renew a cardroom license and extends the hours of operation for all cardrooms from 18 to 24 hours 7 days a week.
- Requires a greyhound permitholder to conduct intertrack wagering on greyhound signals to operate a cardroom.

Current Situation on the Operation of Slot Machines in Florida

Racinos, pari-mutuel facilities that operate slot machine gaming, are governed by ch. 551, F.S. Eligible facilities are defined to include:

1. Any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county;
2. Any licensed pari-mutuel facility located within a county as defined in s. 125.011, F.S., provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding

its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter; or

3. Any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter.

Seven pari-mutuel facilities obtained eligibility through constitutional approval - the first clause. An additional pari-mutuel facility, Hialeah Park, was ineligible as it had not operated live racing or games during 2002 and 2003. It obtained eligibility through the second clause.

No facilities have obtained eligibility through the third clause; however, it has been subject to competing interpretations. Stakeholders and counties have argued that the phrase "after the effective date of this section" applies to "a countywide referendum held" - so any county could authorize slot machines relying on their general authority to hold referenda. Based on this interpretation, Brevard, Gadsden, Lee, Palm Beach, Hamilton and Washington counties, have approved slot machines at pari-mutuel facilities by referendum.

Were such gaming to occur outside of Miami-Dade or Broward counties, all revenue sharing under the Seminole Gaming Compact would end. The Seminole Gaming Compact was ratified in the same law that effectuated the third clause.

The Attorney General rejected this interpretation, arguing that the phrase "after the effective date of this section" modified the phrase "a statutory or constitutional authorization"²² - so, counties could not rely on their general authority to hold referenda, instead needing a specific authorization to hold a referendum on the question of slot machines. The DPMW announced that it would follow this guidance.²³

Slot machine licensees are required to pay a license fee of \$2 million per fiscal year. In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent. 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.

To continue to offer slot machines, permitholders must conduct a full schedule of live racing.²⁴ Additionally, thoroughbred permitholders must file an agreement between the track and the Florida Horsemen's Benevolent and Protective Association governing payment of purses on live thoroughbred races at the licensee's facility with the DPMW, as well as an agreement with the Florida Thoroughbred Breeders' Association on the payment of breeders', stallion, and special racing awards on those races.²⁵ Similarly, quarter horse permitholders must file an agreement with the DPMW between the track and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the licensee's facility governing the payment of purses on live quarter horse races at the licensee's facility.²⁶

Effect of Proposed Changes to the Operation of Slot Machines

²² 2012-01 Fla. Op. Att'y Gen. (2012).

²³ Mary Ellen Klas, *Attorney General Opinion Puts Reins on Slots at Gretna Barrel Racing Track*, Miami Herald (Jan. 12, 2012), <http://www.miamiherald.typepad.com/nakedpolitics/2012/01/attorney-general-opinion-puts-reins-on-gretna-barrel-racing-.html>.

²⁴ s. 551.104(1)(c), F.S.

²⁵ s. 551.104(10)(a)1, F.S.

²⁶ s. 551.104(10)(a)2, F.S.

The bill moves the requirements for obtaining a license to conduct slot machines into the licensing provision and out of the definition and authorization provisions.

The bill continues to require that a slot machine license can only be issued as provided for in current law but removes the provision that caused litigation, discussed above, under which no license has been issued by the state. In order for a pari-mutuel permit holder to obtain slot machine licensure, the applicant must be:

- A licensed pari-mutuel facility where live racing or games were conducted during calendar years 2002 and 2003, located in Miami-Dade County or Broward County, and authorized for slot machine licensure pursuant to s. 23, Art. X of the State Constitution; or
- A licensed pari-mutuel facility where a full schedule of live horseracing has been conducted for 2 consecutive calendar years immediately preceding its application for a slot machine license and located within a county as defined in s. 125.011, F.S.; or
- A licensed pari-mutuel facility located in a county in which a majority of voters approved slots by referendum held concurrently with a Presidential Election that has conducted 250 live performances for the 25 consecutive years immediately preceding the application, but only if the Seminole Compact is amended to permit such activities at such locations.

The bill also provides the additional requirement that the issuance of the license must not trigger a reduction in revenue-sharing payments under the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.

Current Situation on the Authorization of Destination Resorts

Destination resort casinos are not authorized under current law. Destination resort casinos are commonly defined as freestanding, land-based structures that include a gaming facility located in a zoning district that allows mixed-use development, including but not limited to, restaurants, commercial and retail facilities, convention facilities, and buildings designed for permanent, seasonal, or transient housing such as hotels and condominiums.

The establishment of destination casino resorts in large counties such as Miami-Dade and Broward counties was evaluated in 2013 at the request of the Legislature by Spectrum Gaming Group (Spectrum). An evaluation was completed by creating a likely scenario, Scenario I, which was used by Spectrum for the evaluation in its Gambling Impact Study.²⁷

Spectrum stated that destination casino resorts restricted to Miami-Dade and Broward counties “could provide a desirable combination of economic benefits via expansion while minimizing the negative consequences because gaming already is prominent in South Florida.”²⁸ However, Spectrum also stated that the “location and breadth of non-gaming amenities...could pose threats to existing restaurant, hotels and entertainment options—particularly if the resorts failed to attract incremental out-of-market visitors” and cannibalize discretionary spending already destined for existing businesses.²⁹

Spectrum concluded that there would “likely to be only mildly positive impacts on local employment and wages” in densely populated urban Florida counties, because casinos would not represent a large expansion of the local economies of those counties.

Effect of Proposed Changes on the Authorization of Destination Resorts

The bill provides that any county that has an “eligible facility” may conduct a county-wide referendum of qualified electors or a majority-plus-one vote of the county commission to determine whether voters

²⁷ Spectrum Gaming Group, *Gambling Impact Study*, Oct. 28, 2013,

http://www.leg.state.fl.us/gamingstudy/docs/FGIS_Spectrum_28Oct2013.pdf.

²⁸ *Id.* at page 101.

²⁹ *Id.* at page 102.

support the adoption of legislation authorizing destination resort casinos in that area. An “eligible facility” is a pari-mutuel facility authorized to offer slot machines in accordance with s. 551.102(4), F.S.

Currently, Miami-Dade and Broward Counties would meet the requirements and, thus, those county commissions would be permitted to conduct a county-wide referendum or a county commission vote on the question of whether “the operation of a destination resort, . . . , [should] be authorized in the county subject to a minimum private capital investment of \$1.5 billion by the operators of the proposed Destination Resort.”

If the county decides to conduct a referendum or a commission vote, it must be completed no later than December 31, 2016. Once completed, the county must submit the results to the Governor, the President of the Senate and the Speaker of the House. However, the referendum would not be binding on any state government agency.

B. SECTION DIRECTORY:

- Section 1: amends s. 550.002, F.S., exempting a greyhound racing permitholder from a minimum number of required live performances;
- Section 2: amends s. 550.01215, F.S., revising provisions for applications for pari-mutuel operating licenses; authorizing a greyhound racing permitholder to receive an operating license at a leased facility; and removing a provision for conversion of certain permits to jai alai permits;
- Section 3: amends s. 550.0251, F.S., providing for an annual report by DBPR to the Speaker of the House and the President of the Senate;
- Section 4: amends s. 550.054, F.S., providing for revocation of a pari-mutuel permit under certain circumstances; prohibiting the transfer of a pari-mutuel permit or license; removing the provision for conversion of a permit from jai alai to greyhound; and prohibiting relocation;
- Section 5: repeals s. 550.0555, F.S., relating to relocation of greyhound racing permits;
- Section 6: amends s. 550.0745, F.S., repealing provisions for summer jai alai permits;
- Section 7: amends s. 550.0951, F.S., removing tax credits for greyhound permitholders; revising the tax on handle for live greyhound racing and intertrack wagering;
- Section 8: amends s. 550.09512, F.S., removing provisions relating to reissuance of escheated thoroughbred racing permits;
- Section 9: amends s. 550.09514, F.S., removing tax credits for greyhound permitholders; revising purse requirements of a greyhound permitholder that conducts live racing;
- Section 10: amends s. 550.09515, F.S., removing provisions relating to reissuance of escheated thoroughbred racing permits;
- Section 11: amends s. 550.1625, F.S., removing the requirement that a greyhound permitholder pay the breaks tax;
- Section 12: repeals s. 550.1647, F.S., relating to tax credits for unclaimed tickets and breaks for greyhound permitholders;
- Section 13: amends s. 550.1648, F.S., revising requirements for a greyhound permitholder to provide a greyhound adoption booth at its facility; and requiring sterilization of greyhounds before adoption;

- Section 14: creates s. 550.2416, F.S., requiring injuries to racing greyhounds to be reported; requiring the DPMW to maintain the forms as public records; and specifying disciplinary action; and requiring the DPMW to adopt rules;
- Section 15: amends s. 550.26165, F.S., conforming provisions to changes made by the act;
- Section 16: amends s. 550.3345, F.S., removing a provision that allowed conversion and relocation of a quarter horse permit;
- Section 17: amends s. 550.3551, F.S., removing a provision that limits the number of out-of-state races on which wagers are accepted by a greyhound permitholder;
- Section 18: amends s. 550.615, F.S., revising provisions relating to intertrack wagering on greyhound racing;
- Section 19: amends s. 550.6305, F.S., revising provisions requiring certain simulcast signals be made available to certain permitholders;
- Section 20: amends s. 550.6308, F.S., revising the number of days of thoroughbred horse sales that are required to obtain a limited intertrack wagering license;
- Section 21: amends s. 551.101, F.S., reorganizing provisions related to the authorization of the possession slot machines and the conduct of slot machine gaming;
- Section 22: amends s. 551.102, F.S., reorganizing the definitions section to remove licensing requirements, which are duplicated and placed in the licensing section;
- Section 23: amends s. 551.104, F.S., revising provisions for approval of a license to conduct slot machine gaming; providing for authorization of slot machines to certain permitholders in addition to those currently authorized; and specifying that a greyhound permitholder is not required to conduct a full schedule of live racing to maintain a license to conduct slot machine gaming;
- Section 24: amends s. 551.114, F.S., requiring certain greyhound permitholders to locate their slot machine gaming area in certain locations;
- Section 25: amends s. 551.116, F.S., revising the times that a slot machine gaming area may be open;
- Section 26: amends s. 849.086, F.S., revising times a cardroom may operate; specifying that a greyhound permitholder is not required to conduct a minimum number of live racing in order to receive, maintain, or renew a cardroom license; requiring a greyhound permitholder to conduct intertrack wagering on greyhound signals to operate a cardroom;
- Section 27: creates s. 849.095, F.S., allowing the county commissions in Miami-Dade and Broward Counties to conduct a county-wide referendum or a majority-plus-one vote of the county commission on whether destination resort casinos should be authorized with certain requirements; the outcome of which is not binding on any state government agency;
- Section 28: provides for the revocation of certain permits based on the failure to conduct live racing;
- Section 29: provides for the application of certain provisions if a provision is determined to be invalid; and
- Section 30: provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The fiscal impact of the bill is unknown at this time.

2. Expenditures:

The fiscal impact of the bill is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The fiscal impact of the bill is unknown at this time.

2. Expenditures:

The bill amends s. 551.104, F.S., creating an additional way for pari-mutuel permit holders to obtain a slot machine license if the county in which the permit holder is located has conducted a referendum during a Presidential Election approving the use of slot machines. This could have an indeterminate negative fiscal impact on Lee and Palm Beach Counties. However, the bill does not require that the referendum be conducted. Should the county commission decide to conduct the referendum, the fiscal impact will be limited to costs for increased ballot size and advertising costs because the majority of the cost would be included in the cost of the Presidential Election.

The bill creates s. 849.095, F.S., related to destination resort casinos, which allows the county commissions of Miami-Dade and Broward Counties to conduct a county-wide referendum of qualified electors or a majority-plus-one vote of the county commission but does not require the county commission to hold either one. Any negative fiscal impact depends on whether those counties choose to conduct a referendum. If a county-wide election is held in 2015 as a special election, it will have an indeterminate negative fiscal impact on Miami-Dade and Broward Counties. The costs for a county-wide referendum could be limited if it were held along with the scheduled 2016 Presidential Election. Costs could be further limited if the county commissions decide to conduct a majority-plus-one vote of the county commission during a scheduled meeting.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill reduces current requirements for pari-mutuel wagering licensees, such as reduced requirements for operation by a greyhound permit holder, and limited intertrack wagering licensees, it may reduce private sector costs through increased flexibility.

D. FISCAL COMMENTS:

The fiscal impact of the bill is unknown at the time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect counties or municipalities.

2. Other:

Retroactive Legislation

The bill directs the DPMW to revoke permits issued before January 1, 2012, that have not been used for the conduct of pari-mutuel wagering on horseracing, jai alai and greyhound racing, as defined by

the bill. Such permitholders may claim that the retroactive application of this provision violates the Contract Clause of art. I, s. 10, U.S. Constitution, which prohibits states from passing laws which impair contract rights. However, the U.S. Supreme Court has found that "a lottery grant is not in any sense a contract, within the meaning of the constitution of the United States, but is simply a gratuity and license, which the state, under its police powers, and for the protection of the public morals, may at any time revoke, and forbid the further conduct of the lottery."³⁰

Compensation Claims

The bill directs the DPMW to revoke permits under specific situations. One of the provisions provides for the revocation of permits issued before January 1, 2012, that have not been used for the conduct of pari-mutuel wagering. Such permitholders may claim that such revocation constitutes a taking warranting compensation.

The Fifth Amendment of the U.S. Constitution provides that private property shall not be taken for public use without just compensation. "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."³¹ Thus, Florida courts have found no unconstitutional taking in the retroactive application of statutes requiring revocation of certain occupational licenses and licenses to carry concealed firearms if the licensee was a convicted felon because such licensure is a privilege, not a vested right.³²

As to pari-mutuel wagering, "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right."³³ Likewise, the Florida Supreme Court has found that "[a]uthorized gambling is a matter over which the state may exercise greater control and exercise its police power in a more arbitrary manner"³⁴ Thus, the Florida Supreme Court found that, unlike permits to construct a building, "[i]t is doubtful if we can agree with counsel in concluding that a racing permit is a vested interest or right and after once granted cannot be changed."³⁵

Furthermore, compensation may not be warranted if the Legislature is deemed to have exercised its police powers, rather than powers of eminent domain.³⁶ "[T]he Government as condemner may not be required to compensate a condemnee for elements of value that the Government has created, or that it might have destroyed under the exercise of governmental authority other than the power of eminent domain."³⁷ Thus, the loss of licenses to sell alcoholic beverages, for example, is not compensable.³⁸

Similar arguments have been made in states where pari-mutuel wagering has been prohibited after being licensed for many years. When Massachusetts banned greyhound racing by constitutional amendment in 2008, a licensed and operating dog track challenged the ban as a taking. The Supreme Judicial Court of Massachusetts rejected the argument, finding "[T]he plaintiffs here have no compensable property interest in their racing licenses."³⁹

³⁰ *Douglas v. Commonwealth of Kentucky*, 168 U.S. 488 (1897).

³¹ *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

³² *See, e.g., Crane v. Department of State, Div. of Licensing*, 547 So.2d 266, 267 (Fla. 3rd DCA 1989), citing *Mayo v. Market Fruit Co. of Sanford*, 40 So.2d 555, 559 (Fla. 1949).

³³ *Solimena v. State, Dept. of Business Regulation, Division of Pari-Mutuel Wagering*, 402 So.2d 1240 (Fla. 3rd DCA 1981).

³⁴ *Hialeah Race Course v. Gulfstream Park Racing Ass'n*, 37 So.2d 692, 694 (Fla. 1948).

³⁵ *State ex rel. Biscayne Kennel Club v. Stein*, 130 Fla. 517, 520 (Fla. 1938).

³⁶ *City of Miami Springs v. J.J.T.*, 437 So.2d 200 (Fla. 3rd DCA 1983)("even the complete prohibition of a previously lawful and existing business does not constitute a taking where the owner is not deprived of all reasonable use of his property, as long as the prohibition promotes the health, safety and welfare of the community and is thus a valid exercise of the police power.").

³⁷ *U. S. v. Fuller*, 409 U.S. 488, 491-492, 93 S.Ct. 801, 804 (U.S. Ariz.1973).

³⁸ *See, e.g., Yates v. Mulrooney*, 281 N.Y.S. 216, 219 (N.Y. App. Div. 1935); *Mugler v. Kansas*, 123 U.S. 623, 668-70 (1887).

³⁹ *Carney v. Attorney General*, 451 Mass. 803 (2008).

If revoked permits are found to be a taking warranting compensation, just compensation equals the fair market value of the permit at the time of revocation. The fair market value of non-operating permits is uncertain. Such permits are a prerequisite to licensure for pari-mutuel wagering and, by themselves, do not appear to vest the holder with any rights. There are no application fees to receive a permit for pari-mutuel wagering and no fees to retain such a permit. Permits may not be transferred without state approval. While a pari-mutuel wagering permit is one pre-requisite to licensure to conduct cardrooms and slot machines, it is not the only pre-requisite. Not all permit holders may be able to obtain a license to conduct pari-mutuel wagering events, which would require adequate zoning and facilities.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 9, 2015, the Regulatory Affairs Committee considered a proposed committee substitute, adopted three amendments and reported the proposed committee substitute favorably with a committee substitute. These amendments:

- Conditionally allow permit holders who have conducted 250 live performances for 25 consecutive years to offer slot machines after a referendum during a Presidential Election, if the Seminole Compact is amended to permit such activities at such locations.
- Allow the county commissions in Miami-Dade and Broward Counties to conduct a county-wide referendum or a majority-plus-one vote of the county commission on whether destination resort casinos should be authorized. However, the outcome of such vote is not binding on any state government agency.

The staff analysis is drafted to reflect the committee substitute.