HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 7109 PCB RAC 16-02 Gaming
SPONSOR(S): Finance and Tax Committee; Regulatory Affairs Committee, Diaz
TIED BILLS: HB 7111 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Affairs Committee	12 Y, 6 N	Butler	Hamon
1) Finance & Tax Committee	12 Y, 5 N, As CS	Pewitt	Langston

SUMMARY ANALYSIS

The bill ratifies and approves the Gaming Compact between the Tribe and the State of Florida, which was executed by Governor Rick Scott and the Tribe on December 7, 2015 (the 2015 Compact), contingent upon renegotiation. The 2015 Compact permits the Tribe to offer the banked card games (such as blackjack), slot machines, raffles and drawings, live table games (such as craps and roulette), and any other game authorized in Florida. In exchange, the Tribe will make revenue sharing payments totaling at least $3 billion to the State during the first 7 years of the Compact. The Tribe may stop or reduce revenue sharing payments if the state authorizes specified gaming in violation of the Tribe's exclusivity rights as set forth in the 2015 Compact.

The bill makes amendments to Florida's pari-mutuel wagering, slot machines, and gambling laws, including:

- Permitting greyhound, harness, quarterhorse, and certain thoroughbred and jai alai permitholders to conduct pari-mutuel wagering, cardrooms, and slots without the requirement of live races;
- Providing for the revocation of dormant permit, under certain conditions;
- Permitting slot machine licenses in any county, with some exceptions, which holds a successful referendum authorizing slot machines before January 1, 2017.
- Providing for a new slot machine permitholder to be selected pursuant to specified criteria;
- Prohibiting the issuance of new or additional permits, and prohibiting the conversion of permits;
- Prohibiting the transfer or relocation of most pari-mutuel permits or licenses;
- 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;
- Repealing 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;
- Requiring injuries to racing greyhounds be reported;
- Extending weekday hours of operation for all slot machine and cardroom licensees from 18 to 24 hours;
- Streamlining the slot machines chapter and revising the issuance of slot machine licenses;
- Providing that free alcoholic beverages may be served to persons playing slot machines;
- Providing that an automated teller machine may be located in a slot machine licensees' facility;
- Regulating fantasy contests;
- Authorizing, regulating, and taxing multijurisdictional simulcast and wagering;
- Authorizing blackjack at certain facilities with slot machine licenses;
- Creating a thoroughbred purse pool program
- Limiting the number of slot machines that may be available at new facilities and statewide;
- Providing guaranteed minimum tax revenues from new slot machine licensees

The bill is expected to have a fiscal impact on state funds; see *FISCAL COMMENTS*.
The bill provides most provisions are contingent upon the 2015 Gaming Compact becoming effective. Such provisions are effective July 1, 2016, or upon the 2015 Compact becoming effective, whichever is later.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

General Overview of Gaming in Florida

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,[5] bingo,[6] cardrooms,[7]charitable drawings,[8] game promotions (sweepstakes),[9] and bowling tournaments.[10]

In 2013, the Legislature clarified that Internet café style gambling machines were illegal in the state. The legislation clarified existing sections of law regarding slot machines, charitable drawings, game promotions, and amusement machines and created a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prize are prohibited slot machines.[11]

In 2015, the Legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida law and prevent the expansion of casino-style gambling. The Legislature clarified the operation and use of amusement games or machines to ensure that regulations would not be interpreted as creating an exception to the state's general prohibitions against gambling.[12]

Lotteries

Lotteries are prohibited by the Florida Constitution.[13] The constitutional prohibition is codified in statute at s. 849.09, F.S. Other than the statement in the Florida Constitution that indicates that the term "lottery" does not include "types of pari-mutuel pools authorized by law as of the effective date of this constitution," the term "lottery" is not defined by the Florida Constitution or statute. Generally, a lottery is a scheme which contains three elements: consideration, chance, and prize. As to consideration, while most states view consideration narrowly as a tangible asset, such as money, Florida views consideration broadly, as the conferring of any benefit.[14] Thus, even if players do not pay to participate in a game where they have a chance to win a prize, it may be an illegal lottery.

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. This lottery is known as the Florida Education Lotteries and directs proceeds to the State Education Lotteries Trust Fund.
To allow activities that would otherwise be illegal lotteries, the Legislature has carved out several narrow exceptions to the statutory lottery prohibition. Statutory exceptions are provided for charitable

[1] s. 849.08, F.S.
[2] s. 849.01, F.S.
[3] s. 849.09, F.S.
[4] s. 849.16, F.S.
[5] s. 849.085, F.S.
[6] s. 849.0931, F.S.
[7] s. 849.086, F.S.
[8] s. 849.0935, F.S.
[9] s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[10] s. 546.10, F.S.
[11] Florida House of Representatives Select Committee on Gaming, Final Bill Analysis of 2013 CS/HB 155, p. 1 (Apr. 19, 2013).
[12] s. 546.10, F.S.
[13] Article X, s. 7, Fla. Const. *But, see,* Article X, s. 15, Fla. Const., authorizing lotteries operated by the state.
[14] *Little River Theatre Corp. v. State ex rel. Hodge*, 135 Fla. 854 (1939).

bingo, charitable drawings, and game promotions. Charities use drawings or raffles as a fundraising tool. Organizations suggest a donation, collect entries, and randomly select an entry to win a prize. Under s. 849.0935, F.S., qualified organizations may conduct drawings by chance, provided the organization has complied with all applicable provisions of ch. 496, F.S. Game promotions, often called sweepstakes, are advertising tools by which businesses promote their goods or services. As they contain the three elements of a lottery: consideration, chance, and prize, they are generally prohibited by Florida law unless they meet a statutory exception.[15]

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."[16]

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. [17]

Slot Machines

Slot machines have been generally prohibited in Florida since 1937.[18] Section 849.16, F.S., defines a slot machine as a machine or device that requires the insertion of a piece of money, coin, account number, code, or other object or information to operate and allows the user, whether by application of skill or by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, to receive money, credit, allowance, or thing of value, or secure additional chances or rights to use such machine, apparatus, or device. Slot machines are authorized at certain facilities in Broward and Miami-Dade counties by constitutional amendment or statute and are regulated under ch. 551, F.S.[19] Except for the Seminole casinos authorized in the gaming compact with the Seminole Tribe of Florida (the "2010 Compact"), free-standing, commercial casinos are not authorized, and gaming activity, other than what is expressly authorized, is illegal.

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

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[15] *Little River Theatre Corp., supra* at 868.

[16] 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.

[17] 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.

[18] s. 849.15, F.S., originally enacted by s. 1, ch. 18143, L.O.F. (1937).

[19] *See* Article X, Section 23, Florida Constitution; ch. 2010-29, L.O.F. and chapter 551, F.S.

The Division of Pari-mutuel Wagering (Division) within the Department of Business and Professional Regulation (DBPR) regulates and oversees pari-mutuel facilities in Florida. 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.[20] The Division collects revenue in the form of taxes and fees from permitholders for the conduct of gaming.

Chapter 550, F.S., authorizes pari-mutuel wagering at licensed tracks and frontons and provides for state regulation. Pari-mutuel is defined as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes."[21]

Chapter 551, F.S., authorizes slot machine gaming at the location of certain licensed pari-mutuel locations in Miami-Dade County or Broward County and provides for state regulation. Chapter 849, F.S., authorizes cardrooms at certain pari-mutuel facilities.[22] A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[23]

The Division 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.[24]

Current Situation: Seminole Gaming Compact

Indian Gaming in Florida

Gambling on Indian lands is subject to federal law, with limited state involvement. The Indian Gaming and Regulatory Act (IGRA), codified at 25 USCA §§ 2701-2721, was enacted in 1988 in response to the United State Supreme Court decision in California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987). The act provides for "a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between tribes and States for regulation of class III gaming."[25] In so doing, IGRA seeks to balance the competing interests of two sovereigns: the interests of the Tribe in engaging in economic activities for the benefit of its members and the interest of the state in either prohibiting or regulating gaming activities within its borders.[26]

IGRA separates gaming activities into three categories:

- Class I games are "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations."[27] Class I games are within the exclusive jurisdiction of the Indian tribes.[28]
- Class II games are bingo and card games that are explicitly authorized or are not explicitly prohibited by the laws of the State.[29] The tribes may offer Class II card games "only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games." Class II gaming does not include "any banking card games, including baccarat, chemin de

[20] 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.
[21] s. 550.002(22), F.S.
[22] s. 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility.
[23] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state."
[24] s. 550.0251(1), F.S.
[25] United States Senate Report No. 100-446, Aug. 3, 1988.
[26] *Id.*
[27] 25 U.S.C. 2703(6).
[28] 25 U.S.C. 2710(a)(1).
[29] 25 U.S.C. 2703(7)(A).

fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind."[30] Class II games are also within the jurisdiction of the Indian tribes, but are also subject to the provisions of IGRA.[31]
- Class III games are defined as any games that are not Class I or Class II. Class III games include slot machine and banked card games such as blackjack, baccarat and chemin de fir.[32]

A tribe can qualify to offer Class III games in the following ways:

- If the state authorizes Class III games for any purpose to any person, organization, or entity, the tribe must:
    - Authorize the games by an ordinance or resolution adopted by the governing body of the Indian tribe, approved by the Chairman of the National Indian Gaming Commission, and in compliance with IGRA; and
    - Conduct the games in conformance with a Tribal-State compact entered into between the tribe and the State.[33]
- If the state does NOT authorize Class III gaming for any purpose by any person, organization, or entity, the tribe must request negotiations for a tribal-state compact governing gaming activities on tribal lands. Upon receiving such a request, the state may be obligated to negotiate with the Indian tribe in good faith.[34] Under IGRA, a tribe is not entitled to a compact.

When the negotiations fail to produce a compact, a tribe may file suit against the state in federal court and seek a determination of whether the state negotiated in good faith. If the court finds the state negotiated in good faith, the tribe's proposal fails. On a finding of lack of good faith, however, the court may order negotiation, then mediation. If the state ultimately rejects a court-appointed mediator's proposal, the Secretary "shall prescribe, in consultation with the Indian tribe, procedures... under which class III gaming may be conducted."[35]

Generally, in accordance with IGRA a compact may include the following provisions:

- The application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of gaming;
- The allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of laws and regulations;
- An assessment in an amount necessary to defray the costs of regulation;
- Revenue sharing by the Indian tribe for permitted activities;
- Remedies for breach of contract;
- Standards for the operation of gaming and gaming facilities, including licensing; and
- Any other subjects that are directly related to the operation of gaming activities.[36]

Any compact that is entered into by a tribe and a state will take effect when approval by the Secretary of the Interior is published in the Federal Register.[37] Upon receipt of a proposed compact, the Secretary has 45 days to approve or disapprove the compact.[38] A compact will be considered approved if the Secretary fails to act within the 45-day period. A compact that has not been validly "entered into" by a state and a tribe, e.g. execution of a compact by a state officer who lacks the authority to bind the state,

[30] 25 U.S.C. 2703(7)(B).
[31] 25 U.S.C. 2710(a)(2) and (b).
[32] 25 U.S.C. 2703 and 25 C.F.R. § 502.4.
[33] 25 U.S.C. 2710(d)(1).
[34] 25 U.S.C. 2710 (d)(3)(A).
[35] 25 U.S.C. 2710(d)(7). This option is addressed in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), which brought into question whether a tribe has the ability to enforce the provisions of IGRA against a state. The Department of Interior adopted rules to provide a remedy for the tribes. The validity of the rules were also brought into question in *Texas v. United States*, 497 F.3d 491, (5th Cir. 2007).
[36] 25 U.S.C. 2710 (d)(3)(C).
[37] 25 U.S.C. 2710(d)(3)(B).
[38] 25 U.S.C. 2710(d)(8)(C).

cannot be put "into effect", even if the Secretary of the Interior publishes the compact in the Federal Register.[39]

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

> [N]othing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3) (A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.[40]

Notwithstanding this restriction, revenue sharing has been permitted when the State has provided a valuable economic benefit to, usually in the form of substantial exclusivity in game offerings or geographic monopoly or a right to conduct such offerings on more favorable terms than non-Indians.[41]

The 2010 Compact

Chapter 285, F.S., ratified the 2010 Compact. It provides that it is not a crime for a person to participate in raffles, drawings, slot machine gaming, or banked card games (e.g., blackjack or baccarat) at a tribal facility operating under the compact.[42] The 2010 Compact provides for revenue sharing. For the exclusive authority to offer banked card games on tribal lands at five locations and to offer slot machine gaming outside Miami-Dade and Broward Counties, the Seminole Tribe pays the State of Florida a share of "net win" (approximately $240 million per year). Section 285.710(1)(f), F.S., designates the Division within DBPR as the "state compliance agency" having authority to carry out the state's oversight responsibilities under the 2010 Compact. The 2010 Compact took effect when published in the Federal Register on July 6, 2010 and lasts for 20 years, expiring July 31, 2030, unless renewed. The 2010 Compact required the Seminole Tribe to share revenue with the state in the amount of $1 billion over five years.

The 2010 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.[43]

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.

The 2015 Compact

[39] *See Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546, (10th Cir. 1997), cert. denied, 522 U.S. 807 (1997).
[40] 25 U.S.C. 2710(d)(4).
[41] See generally In re Indian Gaming Related Cases, 331 F.3d 1094 (9th Cir. 2003)(upholding revenue sharing where revenues were apportioned to non-gaming tribes); see also Letter From Gale A. Norton, Secretary of the Department of Interior, to Cyrus Schindler, President of the Seneca Nation of Indians, dated November 12, 2002.
[42] s. 285.710, F.S.
[43] The Tribe would automatically be authorized to conduct the same games authorized for any other person at any location.

A new compact was executed by the Governor and the Tribe on December 7, 2015 (the "2015 Compact"), but must be ratified by the Legislature and approved by the United States Secretary of the Interior to become effective. If the 2015 Compact is ratified and approved, the 2010 Compact will be nullified, and the provisions of the 2015 Compact will provide the Tribe exclusivity to operate certain games, with certain exceptions. The 2015 Compact will provide the Tribe exclusivity to operate certain games, with certain exceptions. In exchange, the Tribe will share revenue with the state with a Guaranteed Minimum Compact Term Payment of $3 billion over 7 years.

The 2015 Compact differs from the 2010 Compact in several key ways. The table below outlines the specific provisions that differ between the two compacts:

	2015 Compact	**2010 Compact**
Revenue Sharing	Revenue sharing, providing for minimum guaranteed payments by the Seminole Tribe to the State of $3 billion dollars over seven years.	Revenue sharing, providing for minimum guaranteed payments of $1 billion dollars over the first five years. (The minimum guaranteed payments ended on July 1, 2015)
Class III Gaming Authorizations	All seven Seminole Casinos may offer slot machines, banked card games, raffles and drawings, live table games, and any new game authorized in Florida.	All seven Seminole Casinos may offer slot machines, raffles and drawings, and any new game authorized in Florida. Banked card games may be offered at five of the Seminole Casinos (excluding the Brighton and Big Cypress facilities).
Banked Card Game Exclusivity	No facility in Florida may offer banked or banking card games or live table games, except for certain facilities in Miami-Dade and Broward Counties which may offer blackjack under certain circumstances.[44]	No facility in Florida may offer banked card games.
Slot Machine Exclusivity	No facility except for specifically authorized facilities in Miami-Dade, Broward, or Palm Beach County may offer slot machines.[45]	No facility except for specifically authorized PMW facilities in Miami-Dade or Broward County may offer slot machines.
Compulsive Gambling Exclusivity Payment	Tribe will make annual $1,750,000 donation to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list, so long as exclusivity is maintained.	Tribe will make annual $250,000 donation per Facility ($1,750,000 total) to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list, so long as exclusivity is maintained.
Class III Gaming is authorized in non-specified facilities <u>within</u> Miami-Dade, Palm Beach, or Broward County	Guaranteed minimum payments and revenue sharing payments cease.	Guaranteed minimum payments cease and revenue sharing payments are calculated excluding Broward County facilities.
Class III Gaming is authorized <u>outside</u> of Miami-Dade, Palm Beach, or	All payments under the Compact cease.	All payments under the Compact cease.

[44] Blackjack must be authorized by state law before it may be offered at any facility in Broward or Miami-Dade.
[45] The 2015 Compact allows the Legislature to authorize two additional facilities, one located in Miami-Dade County and one located in Palm Beach County, which may offer slot machines or video race terminals without violating the exclusivity provisions under certain circumstances.

The 2015 Compact contains “internet/online gaming” and “new games” provisions similar to the 2010 Compact. If state law is amended to permit "internet/on-line gaming,” the Tribe will no longer be required to make payments to the state based on the Guaranteed Minimum Compact Term Payments, but will be required to continue make Revenue Share Payments. Internet gaming is not defined in the 2015 Compact.

The 2015 Compact also defines two new types of gaming, as they would relate to the Compact, “video race terminals” and “designated player games.” These games could possibly be considered types of Class III gaming; however, the 2015 Compact specifically excludes both types from violating the exclusivity provisions of the 2015 Compact, in certain situations.

The 2015 Compact defines a video race terminal as, “an individual race terminal linked to a central server as part of a network-based video game, where terminals allow pari-mutuel wagering by players on the results of previously conducted horse races, but only if the game is certified in advance by an independent testing laboratory licensed or contracted by the Division as complying with” a number of provisions.

Obligations of the 2015 Compact

The ratification of the 2015 Compact permits the Tribe to offer the following games, termed “covered games,” at all seven of its tribal casinos:

- Banked card games, including blackjack, chemin de fer, and baccarat;
- Slot machines;
- Raffles and drawings;
- Live table games, including craps and roulette; and
- Any other game authorized for any person for any purpose, except for a compact with a qualifying Indian Tribe.

The ratification of the 2015 Compact provides that “[a]ny of the facilities existing on Indian Lands… may be relocated, expanded, or replaced by another facility on the same Indian Lands with advance notice of sixty (60) calendar days.”

The ratification of the 2015 Compact places a cap on the number of slot machines, banking or banked card games, and live table games that may be offered by the Tribe.

The 2015 Compact has a term of 20 years.

Payments to the State for the 2015 Compact

The 2015 Compact establishes a guarantee minimum payment period that is defined as the seven year period beginning July 1, 2017, and ending June 30, 2024. During the guarantee minimum payment period, the Tribe will make payments as specified, to total $3 billion over seven years. The payments shall be paid by the Tribe to the state as follows:

- During the initial period (from the effective date to June 30, 2017), the Tribe makes payments based on a variable percentage of net win similar to the percentage payments in the 2010 Compact.
- During the guarantee minimum payment period from July 1, 2017 to June 30, 2024, the Tribe pays a total of $3 billion over seven years.
- At the end of the guarantee minimum payment period, if the percentage payments (that range from 13 percent of net win up to $2 billion, to 25 percent of net win greater than $4.5 billion) would have amounted to more than the guaranteed minimum payments, the Tribe must pay the difference.
- The Tribe’s guaranteed minimum revenue sharing payments are:
    - $325 million – 1st year;

  - $350 million – 2nd year;
  - $375 million – 3rd year;
  - $425 million – 4th year;
  - $475 million – 5th year;
  - $500 million – 6th year; and
  - $550 million – 7th year.
- The percentage payments include a 1 percent increase on amounts up to $2 billion, and a 2.5 percent increase on amounts greater than $2 billion, up to and including $3 billion, as compared to the 2010 Compact.
- After the first seven years, the Tribe will continue to make percentage payments to the state without a guaranteed minimum payment.

Exclusivity Requirements of the 2015 Compact

Revenue sharing payments may be affected if the state permits:

- New forms of Class III gaming or other casino-style gaming after July 1, 2015, or Class III gaming or other casino-style gaming at any location not authorized for such games before July 1, 2015;
- Licensed pari-mutuel wagering entities other than the Tribe to offer banked card games;
- Class III gaming at other locations in Miami-Dade, Broward, or Palm Beach counties, except the legislature may add one location in Miami-Dade County with 750 slot machines and 750 video race terminals, if approved by a county-wide referendum, and similarly one location in Palm Beach County;
- Class III gaming to be offered outside of Miami-Dade, Broward, and Palm Beach Counties.

Licensed pari-mutuel wagering entities may not increase the number of slot machines they offer or relocate their facility. If they do so, the guaranteed minimum payments from the Tribe to the state cease and the percentage payments are calculated excluding the Tribe facilities located in Broward County.

The 2015 Compact indicates that internet gaming is not currently permitted in Florida. If the legislature authorizes internet gaming, the guaranteed minimum payments cease, but the percentage payments continue. If the Tribe offers internet gaming to patrons, then the guaranteed minimum payments continue.

Exceptions to Violations of the 2015 Compact Exclusivity Provisions

The 2015 Compact provides that the legislature may authorize non-tribe pari-mutuel wagering entities to conduct the following actions without affecting revenue sharing:

- Licensed pari-mutuel wagering facilities in Miami-Dade and Broward Counties may offer blackjack, subject to limitations;
- One new location in Miami-Dade County may offer slot machines and video race terminals, subject to limitations, if approved by a county-wide referendum;
- One new location in Palm Beach may offer slot machines and video race terminals, subject to limitations, if approved by a county-wide referendum;

Slot machines and video race terminals at the above locations do not violate the 2015 Compact so long as a maximum of 500 slot machines and 250 video race terminals are offered before October 1, 2018, and a maximum of 750 slot machines and 750 video race terminals are offered after October 1, 2018.

Effect of the Bill: Seminole Gaming Compact

Indian Gaming in Florida

Ratification of the 2015 Compact

The bill ratifies and approves the 2015 Compact between the Tribe and the State of Florida, contingent on the Governor and the Tribe amending the 2015 Compact to include the following provisions:

- All amendments to chapters 285, 546, 550, 551, and 849 made by the bill are authorized by the Compact, do not affect the Tribe's revenue sharing agreement, violate the Tribe's exclusivity, or authorize the Tribe to conduct online gaming;
- The Tribe will have exclusive authority to operate slot machines in Glades, Hendry, and Collier Counties and within 100 miles of the Seminole Hard Rock Hotel and Casino-Tampa;
- The Tribe will have exclusive authority to operate banked card games, including blackjack, baccarat, and chemin de fer in Glades, Hendry, Collier, and Hillsborough Counties;
- The Tribe will have exclusive authority to operate dice games, such as craps and sic-bo, and wheel games, such as roulette and big six, in Broward, Glades, Hendry, Collier, and Hillsborough Counties;
- The cumulative total of slot machines offered by pari-mutuel facilities in Florida may not exceed 16,000, and any facility authorized to offer slot machines after the effective date of the act may not offer more than 1,500 slot machines;
- No facility may be licensed to offer slot machines unless it is outside the area where the Tribe is granted exclusive rights to offer slot machines.
- Any relocation of a facility on Tribal lands is limited to relocation to a contiguous parcel;
- The live table games which the Tribe are permitted to offer are limited to craps, sic-bo, roulette, bix six, and similar variations of big six.

If ratified, the 2015 Compact will supersede the 2010 Compact, and will become effective after approval by the U.S. Secretary of the Interior. Furthermore, the bill requires Governor Scott to cooperate with the Tribe in seeking approval of the 2015 Compact from the United States Secretary of the Interior.

Current Situation: Fantasy Contests

Background of fantasy contest industry

A fantasy contest (also called a fantasy sport or fantasy game) is a type of contest where participants assemble, own, and manage imaginary teams made up of actual professional sports players. The teams compete based on the statistical performance generated by the actual players in an actual sports game. The players' performances are converted into points that are compiled according to the participant's team roster. In fantasy contests, participants draft, trade, and cut players similar to a real team owner.

The online fantasy contest industry is a $4 billion dollar industry in the United States.[46] Fantasy NFL football is the most popular fantasy contest, and in 2015 an estimated 56.8 million people competed in fantasy contests in the United States and Canada.[47]

Although fantasy contests began as a contest played amongst friends or co-workers, new technology in the mid-1990s allowed for broader access to the public to pursue fantasy contests because statistics could be easily and quickly compiled online. Additionally, news and information about players was more readily available through growing access to the Internet.

Daily fantasy contests are an accelerated version of fantasy contests, which are played across a shorter period of time. For example, daily fantasy contests may be played over a single week in a season, rather than the entire season. Daily fantasy contests typically require an entry fee. The fee

[46] FANTASY SPORTS TRADE ASSOCIATION, http://fsta.org/about (last visited January 8, 2016).
[47] FANTASY SPORTS TRADE ASSOCIATION, http://fsta.org/research/industry-demographics/ (last visited January 8, 2016).

funds an advertised prize pool from which the servicer takes a percentage of fees collected as revenue.[48]

The legality of daily fantasy contests has been challenged nationwide with critics arguing that the contests more closely resemble proposition wagering on athlete performance than traditional fantasy contests.

Fantasy contests in Florida

The Florida Constitution, Florida Statutes, and Florida courts have not specifically addressed fantasy contests. Regardless of whether fantasy contests are games of skill or games of chance, they may be subject to the state's gambling laws and anti-bookmaking statute. Section 849.14, F.S., provides that a stake, bet, or wager of money or another thing of value placed "upon the result of any trial or contest of skill, speed, power, or endurance of human or beast" is unlawful. Receiving money or acting as the custodian or depositary of money as part of such a stake, bet, or wager is also unlawful.

Section 849.25, F.S., Florida's anti-bookmaking statute, defines bookmaking as "the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever." The statute includes factors that are to be considered evidence of bookmaking, including charging a percentage on accepted wagers, receiving more than five wagers in a day, and receiving over $500 in total wagers in a single day or over $1500 in a single week.[49]

On January 8th, 1991, Florida Attorney General Robert A. Butterworth provided an advisory legal opinion[50] regarding whether participation in a fantasy sports league violated Florida's gambling laws. Butterworth concluded that the operation of a fantasy league would violate s. 849.14, F.S. Butterworth concluded that since the fantasy sports league's entry fee was used to make up the prizes, it qualified as a "stake, bet, or wager" under Florida law.[51] He stated that, "while the skill of the individual contestant picking the members of the fantasy team is involved, the prizes are paid to the contestants based upon the performance of the individual professional football players in actual games."[52]

Butterworth concluded that contests, in which the skill of the contestant predominates over the element of chance, such as in certain sports contests, are not prohibited lotteries. As an example, he noted that golf and bowling tournaments were contests of skill and were not prohibited. He considered that "it might well be argued that skill is involved in the selection of a successful fantasy team by requiring knowledge of the varying abilities and skills of the professional football players who will be selected to make up the fantasy team."[53]

Fantasy contests may be subject to Florida's anti-lottery laws. Players in daily fantasy contests are competing for a distribution of a prize that may be made from a pool of funds that are made up of players' contributions. It is unknown whether all fantasy contest operators conduct fantasy contests similarly. Numerous types of contests are currently being offered, including, but not limited to, cash games, guaranteed prize pool games, double-up or 50/50 games, and head-to-head games. Most prizes appear to be based on the accumulation of entry fees and contests have been cancelled when the number of required participants has not been met and operators reserve the right to cancel contests at their discretion.[54]

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[48] THE WASHINGTON POST, *Daily fantasy sports Web sites find riches in Internet gaming law loophole*, https://www.washingtonpost.com/sports/daily-fantasy-sports-web-sites-find-riches-in-internet-gaming-law-loophole/2015/03/27/92988444-d172-11e4-a62f-ee745911a4ff_story.html (last visited January 8, 2016).
[49] s. 849.25(1)(b), F.S.
[50] 91-03 Fla. Op. Att'y Gen. (1991).
[51] *Creash v. State*, 131 Fla. 111, 118 (Fla. 1938).
[52] 91-03 Fla. Op. Att'y Gen. (1991).
[53] *Id.*
[54] FANDUEL, Terms of Use, https://www.fanduel.com/terms (last visited January 16, 2016).

These types of games may be considered pool betting or pari-mutuel betting. The Attorney General of Nevada has determined that daily fantasy contests constitute sports pools.[55] Daily fantasy contest sites may apply to the Nevada Gaming Control Board for a license to operate a sports pool in the state. Internationally, some daily fantasy contest sites are licensed for pool betting.[56] The Florida Constitution[57] prohibits lotteries other than pari-mutuel pools authorized by law as of the effective date of the 1968 Constitution.

Fantasy contests in the United States

The federal Unlawful Internet Gambling Enforcement Act of 2006[58] ("UIGEA") prohibits the processing of certain online financial wagering to prevent payment systems from being used in illegal online gambling. The UIGEA prohibits gambling businesses from knowingly accepting payments in connection with a "bet or wager" that involves the use of the Internet and that is unlawful under any federal or state law.

The UIGEA expressly states that participation in fantasy or simulation sports contests is not included in the definition of "bet or wager"[59] when certain conditions are met. For purposes of the UIGEA, participation in a fantasy or simulation sports contest is not a bet or wager when:

- Prizes and awards offered to winning participants are established and made known in advance of the game or contest and the value is not determined by the number of participants or amount of fees paid by the participants.
- Winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals.
- Winning outcomes are not based on the score, point spread, or any performance of any single sports team or combination of such teams or solely on a single performance of an individual athlete in a single sporting event.

Contest operators argue that they are legal under the UIGEA. In *Humphrey v. Viacom, Inc.*, the district court determined that because the entry fee was paid "unconditionally," the owner did not participate, and the prizes were guaranteed and determined in advance, the fantasy contest entry fees were not "wagers" under the act.[60] However, although the UIGEA exempts fantasy and simulation sports contests from the application of the UIGEA, it does not make such contests legal generally. The UIGEA does not change or preempt any other federal or state law. As expressed in the Rule of Construction in the UIGEA, "no provision of this subchapter shall be construed as altering, limiting, or extending any federal or state law or tribal-state compact prohibiting, permitting, or regulating gambling within the United States."[61] Therefore, any other state or federal law could apply.

The federal Professional and Amateur Sports Protection Act of 1992 ("PASPA") states that it is unlawful for a governmental entity or person to operate or promote any gambling that is based directly or indirectly on one or more competitive sports games or on the performance of an amateur or professional athlete in a competitive sports game.[62] States are prohibited from authorizing or licensing sports betting not already legal as of 1992.[63] A professional or amateur sports organization whose competitive game is alleged to be the basis of a violation of PASPA has standing to bring a civil action

[55] 2015-102 Nev. Op. Att'y Gen. 8 (2015).
[56] DraftKings, Inc. is licensed for Pool Betting and Gambling Software by the UK Gambling Commission. https://secure.gamblingcommission.gov.uk/gccustomweb/PublicRegister/PRAccountDetails.aspx?accountNo=42475 (last visited January 6, 2015).
[57] FLA. CONST. art. X, s. 7.
[58] 31 U.S..C. § 5361-5366 (2006).
[59] 31 U.S.C. § 5362(1) (2006).
[60] *Humphrey v. Viacom, Inc.*, 2007 WL 1797648 (D.N.J. June 20, 2007).
[61] 31 U.S..C. § 5361(b) (2006).
[62] 28 U.S.C. § 3702 (1992).
[63] Nevada, Delaware, Montana, and Oregon allowed sports betting in 1992 and met the criteria under the law.

in federal district court to enjoin a violation. Currently, the NCAA and others are suing the state of New Jersey for attempting to repeal an anti-sports betting statute.[64]

Because many fantasy contests are operated in partnership with a professional sports league, it may be unlikely that such contests would face legal challenge under PASPA.[65] However, the National Collegiate Athletic Association has historically been fearful of online gambling, so college-related fantasy contests may be open to a higher risk of a legal challenge under PASPA.[66] Additionally, contests that offer the opportunity for users to bet on game results rather than player performance are at an elevated risk of a legal challenge due to PASPA language that provides that it is unlawful to operate or promote gambling indirectly on a sports game or performance.[67] PASPA prohibits betting, gambling, or wagering on one or more performances of professional or amateur athletes in a competitive game. [68]

The federal Illegal Gambling Business Act of 1970 ("IGBA")[69] defines an "illegal gambling business" as a gambling business that is in violation of the law of the state in which it is conducted, involves five or more persons who conduct or manage all or part of such business, and that has been in continuous operation for a period of more than 30 days or has a gross revenue of $2000 in a single day. The IGBA specifically exempts savings promotion raffles and bingo games, lotteries, or other games of chance operated by certain non-profit corporations.[70] An employee or company that has violated the IGBA is subject to penalties including fines, forfeiture of profits and assets, and imprisonment for up to 5 years.

Several states, including Arizona, Iowa, Louisiana, Montana, and Washington have current laws that have been interpreted to make fantasy contests illegal in their jurisdictions, though some of those states have recently proposed legislation to legalize and regulate fantasy contests.[71] Several other states, including California, Illinois, Massachusetts, and Pennsylvania, have proposed legislation to clarify and regulate fantasy contests.[72] Proposed legislation in Florida, Illinois, Louisiana, Missouri, Pennsylvania, and Washington uses language from the UIGEA to legalize and regulate fantasy contests. The proposed Illinois legislation is similar to the Florida bill.[73] Maryland and Kansas expressly legalized fantasy contests in 2012 and 2015, respectively. Currently, there is not a regulatory framework for fantasy contests in the State of Florida.

Effect of the Bill: Fantasy Contests

The bill creates s. 546.11-546.19, F.S., known as the “Fantasy Contest Amusement Act,” to regulate fantasy contests. The bill provides requirements for fantasy contest operators, including registration requirements, and outlines penalties for violations of the provisions.

The bill defines the term "fantasy contest" to mean a fantasy or simulated sports game or contest where the contest participant manages and owns a fantasy or simulated sports team made up of human athletes or players that are members of an amateur or professional sports organization and that meets the following conditions:

[64] *NCAA v. Governor of the State of N.J.*, 730 F.3d 208 (3d Cir. Sept. 17, 2013). The Court determined that New Jersey's law violated PASPA because it authorizes sports gambling, but has since granted a re-hearing of the case which vacates the original decision.
[65] Marc Edelman, *Navigating the Legal Risks of Daily Fantasy Sports: A Detailed Primer in Federal and State Gambling Law*, U. Ill. L. Rev. (accepted for publication in January 2016 edition).
[66] *See* Marissa Lankester, *Time to Fight against Sports Gambling*, Star Ledger (Newark, NJ), May 29, 2014, at 17.
[67] *Edelman* at 34.
[68] SPORTS LAW BLOG, *No Question, PASPA Applies to Daily Fantasy Sports*, http://sports-law.blogspot.com/2016/01/no-question-paspa-applies-to-daily.html (last visited Jan. 14, 2016).
[69] 18 U.S.C. § 1995 (1970).
[70] *See* 26 US.C. § 501.
[71] Iowa, Louisiana, and Montana brought forth unsuccessful legislation to clarify and regulate fantasy contests in 2015. Washington held a committee hearing on a bill to be introduced in the 2016 session.
[72] *See* LEGAL SPORTS REPORT, http://www.legalsportsreport.com/dfs-bill-tracker/ (last visited Jan. 6, 2016).
[73] HB 4323 (IL 2016).

- The value of all prizes and awards offered to winning players must be established and made known in advance of contest, and the value of such prizes may not be based on the number of contest participants or the amount of entry fees paid;
- Winning outcomes must reflect the relative knowledge and skill of the players and are determined by accumulated statistical results of the performance of human athletes or players;
- Winning outcomes may not be based on the score, point spread, or any performance of any single sports team or combination of such teams or solely on a single performance of a single human athlete or player in a single sporting event;
- Fantasy contests may not be based on the results of college or high school sports teams, athletes, or players; and
- Membership of a fantasy or simulation sports team may not be based on the current membership, or on a majority of the current membership, of an actual team that is a member of an amateur or professional sports organization.

This definition generally follows the exception provided in the federal UIGEA.[74]

The bill defines the term "fantasy contest operator" to mean a person or entity other than a non-commercial contest operator that offers fantasy contests requiring an entry fee for a cash prize to members of the general public. A fantasy contest operator must register with the Division of Regulation within the Department of Business and Professional Regulation to offer fantasy contests in the state and pay an initial registration fee. The initial registration fee is the lesser of:

- $500,000; or
- Ten percent of the applicant's net revenue in the first year of operation, where net revenue is defined as the difference between the total amount of entry fees collected from contest participants in this state and the total amount of cash or equivalent prizes awarded to contest participants in this state.

At the time of application, a contest operator must provide an estimate of its application fee based on its expected net revenue during the first year, and must provide written evidence to the division justifying the estimate. It must also include a payment equal to the estimated amount before any license may be granted.

The annual license renewal fee is the lesser of:

- $100,000; or
- Ten percent of the contest operator's net revenue in the year after the license is renewed.

Upon applying for renewal of licensure, the contest operator must provide an estimate of its renewal fee based on its expected net revenue during the upcoming year, and must provide written evidence to the division justifying the estimate. It must also remit a payment in an amount equal to its estimated renewal fee, plus the difference between its actual application or renewal fee for the previous year and the estimated fee it paid at the time of licensure or renewal the previous year.

Application and renewal fees are deposited into the Professional Regulation Trust Fund to pay for the cost of regulation and the compulsive behavior program created by the bill.

The bill requires that the division grant or deny a license within 120 days of receiving an application. If no action has been taking after 120 days, the application is deemed to be approved. The bill provides requirements for the contents of the application, including:

- The full name of the applicant;
- The names and addresses of officers, directors, and owners of 5% or greater equity;
- The names and addresses of the ultimate equitable owners if different than those listed above;
- The estimated number of fantasy contests to be held annually;

[74] 31 U.S.C. § 5362(1)(E)(ix)(1).

- A statement of the assets and liabilities of the applicant;
- The names and addresses of officers and directors of any debtor of the applicant, if the division requires;
- A complete set of fingerprints for each officer and director of the applicant, which must be submitted to the Federal Bureau of Investigation.

A contest operator may not be licensed if the applicant or any officer or director of the applicant has been convicted of a felony in this state, or of a crime in another state which is a felony in this state, or if the division finds them not to be of good moral character. The contest operator must provide proof of a surety bond, payable to the state, in the amount of $1 million. The division is authorized to suspend, revoke, or deny the license of any contest operator found to be in violation of the act or any rules promulgated therefrom.

A fantasy contest operator is required to implement the following consumer protection procedures:

- Restrict employees of the fantasy contest operator and certain relatives of such employees from competing in fantasy contests open to the public.
- Restrict fantasy contest operators from being a contest participant in the contest offered by the operator.
- Prevent employees of the contest operator from sharing confidential information that could affect fantasy contest play.
- Verify that contest players are 18 years of age or older.
- Restrict a person from entering a fantasy contest that is determined on the accumulated statistical results of a team of individuals in which the person is a player, game official, coach, owner or other participant.
- Allow a person to restrict or prevent his or her own access to a fantasy contest upon request.
- Disclose the number of entries that a fantasy contest player may submit to a fantasy contest and provide steps to prevent players from submitting more than the allowable number.
- Separate contest players' funds from operational funds and maintain a reserve.
- Contract with a third party to perform an annual independent audit to ensure compliance with this section and submit the results to the division.
- Offer training to employees on responsible play and work with and fund a compulsive or addictive behavior prevention program using 7.5% of the proceeds from application and renewal fees.
- Prevent fantasy contests involving horseracing.

The division is authorized to adopt rules to enforce the provisions of the act, including the creation of recordkeeping and reporting requirements. It is also authorized to:

- Conduct investigations of fantasy contests;
- Review the books, accounts, and records of contest operators;
- Take testimony, issue summons and subpoenas; and
- Monitor and ensure safeguarding of fantasy contest entry fees.

The bill provides recordkeeping requirements for contest operators, including that such records be maintained for a minimum of 3 years, and that they contain sufficient detail for the division to determine whether the contest operator is in compliance with the law. The contest operator must make such records available for inspection by the division. It must also submit a quarterly report to the division containing such information as the division requires.

The bill provides that a contest operator or employee or agent thereof who violates the provisions in this bill is subject to a civil penalty not to exceed $5,000 per violation, up to a cap of $100,000, which shall accrue to the state and may be recovered through civil action brought by the division or the Department of Legal Affairs.

The bill provides that fantasy contests, as defined in the bill, which are conducted by a licensed contest operator or a noncommercial contest operator would be exempt from the provisions of:

- 849. 01, F.S., relating to the keeping of gambling houses;
- 849.08, F.S., relating to gambling;
- 849.09, F.S., relating to the prohibition of lotteries;
- 849.11, F.S., relating to games of chance by lot;
- 849.14, F.S., relating to bets on contests of skill; and
- 849.25, F.S., relating to bookmaking.

It provides that any contest operator who applies for licensure within 90 days of the act becoming law and who is granted a license within 240 days of the act becoming law shall not be subject to the penalties established in 546.18 for offering fantasy contests prior to 240 days after the effective date of the act.

Current Situation: Pari-mutuel Wagering

Licensed Pari-mutuel Wagering in Florida

In Florida, pari-mutuel wagering is authorized on jai alai, greyhound racing and various forms of horseracing and overseen by the Division. 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 Division, which is then subject to ratification by county referendum. Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities,[75] cardrooms,[76] and slot machines.[77]

Horse racing was authorized in the state 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.[78] Quarter horse racing involves horses developed in the western United States which are capable of high speed for a short distance.[79] They are registered with the American Quarter Horse Association.

Permit Applications

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

The Division 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.[80] Currently, 24 pari-mutuel facilities are operating cardrooms. There are eight 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

[75] s. 550.0115, F.S.
[76] s. 849.086, F.S.
[77] s. 551.104, F.S.
[78] s. 550.002(33), F.S.
[79] s. 550.002(28), F.S.
[80] Florida Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering, *Pari-Mutuel Permitholders with 2015-2016 Operating Licenses, available at* http://www.myfloridalicense.com/dbpr/pmw/documents/MAP-Permitholders--WITH--2015-2016-OperatingLicenses.pdf

- 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 Division shall revoke the permit after giving adequate notice to the permitholder.[81] The Division 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.[82] 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.

Permit 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 Division is required to grant the application for relocation once the permitholder fulfills the requirements of the statute. Approval by the Division is required for relocations under s. 550.0555, F.S.

Permit 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.[83] In the past, quarter horse permits have been converted to limited thoroughbred permits,[84] jai alai to greyhound racing,[85] etc.

Permitholders may also convert to conduct summer jai alai, in certain circumstances.[86] This provision, enacted in 1980, has been subject to competing interpretations.[87] 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

[81] s. 550.054(10), F.S.
[82] s. 550.09515(3)(a), F.S.
[83] 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).
[84] *See* s. 550.3345, F.S.
[85] ch. 89-219, Laws of Fla.
[86] s. 550.0745, F.S.
[87] Following rulings from the First and Third District Courts of Appeal, DBPR issued a new summer jai alai permit to the South Florida Racing Association in Miami-Dade county. *South Florida Racing Association, LLC v. Department of Business & Professional Regulation, Division of Pari-mutuel Wagering, Consent Order, Case No*. 2014-042577 (July 31, 2015).

summer jai alai *so long as there is no increase in the number of permittees authorized to operate* within any specified county." 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.[88]

A limited amount of intertrack wagering is also authorized by statute for one permanent thoroughbred sales facility.[89] 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.

Live Racing Requirements

To be eligible for a cardroom license, permitholders must conduct at least 90% of the performances conducted the year they applied for the initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances. [90] To conduct intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing as defined in ch. 550 and meet other requirements.[91] To continue to offer slot machines, permitholders must conduct a full schedule of live racing as defined in ch. 550.[92]

Effect of the Bill: Pari-Mutuel Wagering

Licensed Pari-mutuel Wagering in Florida

[88] *See* s. 550.615, F.S.
[89] s. 550.6308, F.S.
[90] s. 849.086(5)(b), F.S.
[91] *See* s. 550.615, F.S.
[92] s. 551.104(1)(c), F.S.

The bill amends s. 550.0251, F.S., providing that the Division 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.
- A summary of each permitholder's licensing history.
- Any suggestions to more effectively achieve the purposes of ch. 550, F.S.

Permit Applications

The bill provides that, effective upon becoming law, the Division may not approve or issue any new permit authorizing pari-mutuel wagering.

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, unless the permit was issued on or after July 1, 2015.
- If a permitholder fails to pay taxes and fees pursuant to ch. 550, chapter 551, or s. 849.086 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.

Permit Relocation

The bill repeals all relocation provisions, with the exception of the provisions related to relocation for certain greyhound facilities. The bill additionally allows any greyhound permitholder which previously converted from a jai alai permit to relocate within 30 miles, as long as the new facility is in the same county, the department approves the move, the new facility is at least 10 miles from any other pari-mutuel, and, if there are 3 or more pari-mutuel facilities in the county, at least 10 miles from the mean high tide line of the Atlantic Ocean.

Permit Conversion

The bill repeals all conversion provisions.

Intertrack Wagering

The bill reduces requirements for intertrack wagering:

- Any track or fronton licensed under ch. 550, F.S., and any permitholder that does not perform a full schedule of live races, may receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games.
- However, some permitholders may still need to obtain written consent if the same class of live race or game is conducted within the market area of the permitholder to accept intertrack wagers.

Limited Intertrack Wagering

The bill also reduces the requirements to obtain 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.
- The restrictions on when intertrack wagering can be offered are removed, and the same restrictions that apply to other pari-mutuel permitholders will now apply.

Live Racing Requirements

The bill removes the live racing requirement for all harness, quarterhorse, and greyhound racing permitholders who meet minimum requirements, and for thoroughbred racing permitholders who have had an operating license for 25 years and a slot license for 5 years, and for jai alai permitholders who have had an operating license for at least 5 years and who are not authorized to operate a cardroom. The bill amends ch. 550, F.S., to provide conforming changes throughout the chapter to allow certain permitholders the ability to operate pari-mutuel wagering, cardrooms, and slots without live racing and provides the option for permitholders to choose whether to continue to conduct live performances or to conduct no live performance. All greyhound racing permitholders are limited to holding no more live races than were held by that permitholder in the 2015-2016 fiscal year, or 110 races, whichever is greater.

Thoroughbred Purse Pool

The bill creates a thoroughbred racing purse pool to be allocated to certain thoroughbred permitholders. The bill amends s. 285.710, F.S., and provides that, in addition to the three percent distributed to local governments, including counties and municipalities affected by the Seminole Tribe's operation of covered games, $10 million of the amount paid by the Tribe to the state shall be designated as a thoroughbred purse pool. The purse pool shall be distributed equally to any thoroughbred permitholder that:

- Has conducted a full schedule of live races for 15 consecutive years preceding the 2015-2016 fiscal year;
- Has never held a slot machine license; and
- Is located in a county in which class III gaming is conducted on Indian lands.

The permitholder that receives the allocation from the purse pool must use it for thoroughbred racing purses and the operations of the permitholder's thoroughbred racing facility, with at least 75% of the funds being used for purses.

The bill creates a new section, 550.1172, which provides for a new thoroughbred purse pool to be funded by 4% of operating revenues from card rooms operated by pari-mutuel permitholders that have decoupled. The funds from this program are distributed to thoroughbred racing permitholders running live performances on a pro rata basis, based on the permitholder's share of total live throughbred race days during the state fiscal year.

Multijurisdictional simulcast and interactive wagering totalisator hubs

The bill creates s. 550.6347, relating to multijurisdictional simulcast and interactive wagering totalisator hubs. The bill defines a “multijurisdictional simulcast and interactive wagering totalisator hub” or “hub” as a business that, through a qualified subscriber-based service, conducts pari-mutuel wagering on the races that it simulcasts and other races that it carries in its wagering menu. It defines a “qualified subscriber-based service” as any information service or system that uses:

- A device or combination of devices authorized and operated for placing, receiving, or otherwise making a wager, and to which a person must subscribe in order to be able to place, receive, or otherwise make a bet or wager;
- An effective customer verification and age verification system; and
- Appropriate security standards to prevent unauthorized access by any person who has not subscribed or who is a minor.

The bill requires that each hub, officer of a hub, and employee of a hub, if such employee is located in this state, acquire an occupational license pursuant to s. 550.105(2)(a).

Each hub is required to pay a daily license fee of $100 per day of operations. It must also pay a tax in an amount equal to 0.5% of the total wagers recorded on pari-mutuel events in this state. Such funds are to be deposited into the Pari-Mutuel Wagering Trust Fund pursuant to s. 550.0951(5).

The bill states that, except as otherwise provided, wagers placed through hubs are subject to s. 849.01, relating to the keeping of gambling houses. It also states that wagers may only be made through a hub by somebody in the enclosure of a licensed pari-mutuel facility, or by using a device owned or leased for at least 12 months by the person making the wager.

Other Changes to Pari-mutuel Wagering

The bill:

- 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. 550.1647, 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 Division within a certain timeframe and specifying information that must be included in the form. It requires the Division 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. The division must fine, suspend, or revoke the license of any individual who knowingly violates any part of the section. It allows DBPR to adopt a rule defining “injury.”
- Requires greyhound permitholders to offer certain simulcast signals if offering intertrack wagering and requires a greyhound permitholder to conduct intertrack wagering on thoroughbred signals to operate a cardroom.
- Allows a limited thoroughbred racing permitholder to apply to run live races under certain circumstances.

Current Situation: Slot Machines

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:

- 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;
- 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
- 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, but have not received a slot machine license.

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"[93] - 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, which the Division followed.[94] Permitholders have disputed this interpretation and, after appealing one case to the 1st District Court of Appeal, cases are currently pending in the Florida Supreme Court and the 4th District Court of Appeal on the issue.[95] Were such gaming to occur, all revenue sharing would end under the 2010 Compact (if outside Miami-Dade or Broward Counties) and the 2015 Compact (if outside of Miami-Dade, Broward, or Palm Beach Counties). The 2010 Compact was ratified in the same law that effectuated the third clause.

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.[96] 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

[93] 2012-01 Fla. Op. Att'y Gen. (2012).
[94] 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.
[95] The first district court of appeal certified a question to the Florida Supreme Court and the Florida Supreme Court has accepted jurisdiction. *See Gretna Racing, LLC v. Dep't of Bus. & Prof'l Regulation*, 178 So. 3d 15 (Fla. Dist. Ct. App. 2015) *review granted sub nom. Gretna Racing, LLC v. Florida Dep't of Bus. & Prof'l Regulation*, No. SC15-1929, 2015 WL 8212827 (Fla. Dec. 1, 2015).
[96] s. 551.104(1)(c), F.S.

races at the licensee's facility with the Division, as well as an agreement with the Florida Thoroughbred Breeders' Association on the payment of breeders', stallion, and special racing awards on those races.[97] Similarly, quarter horse permitholders must file an agreement with the Division 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.[98]

Effect of the Bill: Slot Machines

The bill amends the definition of "eligible facility" to state that any licensed pari-mutuel facility may apply for and receive a license to operate slot machines if a majority of voters approve slot machines in a countywide referendum in the county where the facility is located before January 1, 2017, and if it meets other requirements of the law. Countywide referendums held prior to the effective date of the bill satisfy this requirement. A facility is not eligible for a license to operate slot machines if it is within 100 miles of the Hard Rock Hotel and Casino in Tampa.

Any facility which receives a license to operate slot machines pursuant to this change is limited to no more than 1,000 slot machines, effective January 1, 2017. Effective October 1, 2018, this limit is increased to 1,500. Additionally, the bill limits to 16,000 the cumulative total of slot machines at pari-mutuels in the state. If the total exceeds this number, facilities may not add any additional slot machines, but are not required to remove any slot machines already located in the facility.

The Division may not issue a license if such an issuance would trigger a reduction in revenue-sharing payments under the 2015 Compact.

The bill requires that the total tax revenue paid on slot machine operations by permitholders who receive their slot machine license subsequent to a countywide referendum held after January 1, 2012, exceed $34.75 million in fiscal year 2018-2019, $69.5 million in fiscal year 2019-2020, and $121.4 million in fiscal year 2020-2021 and each fiscal year thereafter. If the actual taxes received by the state from such licensees is less than the required minimum, each such licensee must pay to the state an amount equal to its pro rata share of the difference between the required minimum tax payments and the actual aggregate tax payments from all such licensees.

New Slot Machine License in Miami-Dade County

The bill allows issuance of an additional slot machine license in a county as defined in s. 125.011, F.S., for the purpose of enhancing live pari-mutuel activity. Any pari-mutuel permitholder in that county that is not a slot machine licensee may apply for the license within 120 days after the effective date of the bill, upon payment of a $2 million nonrefundable application fee. If there is more than one applicant, the license will be awarded by the division to the applicant that receives the highest score based on specified criteria. The bill does not specify the relative value or points that are attributable to the selection criteria.

The division must complete its evaluations at least 120 days after the submission of applications and notice its intent to award the license within that time. The time frames in the Administrative Procedure Act do not apply. Any protest of the intent to award the license will be heard by the Division of Administrative Hearings, and any appeal of a license denial must be made to the First District Court of Appeal. The division is authorized to adopt emergency rules, based on a legislative finding that such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to benefit the public. The division is exempted from existing law requiring publication in writing at the time of, or prior to, its action, the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare, and its reasons for concluding that the procedure used is fair under the circumstances. The emergency rules may be effective for longer

[97] s. 551.104(10)(a)1, F.S.
[98] s. 551.104(10)(a)2, F.S.

than 90 days and may be renewed. The bill provides the emergency rules will remain in effect until replaced by other emergency rules or by rules adopted pursuant to the Administrative Procedure Act.

Additional Changes to Slot Machines

The bill also:

- Extends the hours of operation for all slot machine licensees from 18 to 24 hours 7 days a week.
- Lowers the tax rate on slot machine revenues from 35 percent to 30 percent effective January 1, 2017, with the option for a facility to acquire a tax rate of 25 percent, effective July 1, 2017, if the facility voluntarily elects to permanently reduce its authorized total number of slot machines to 1,700 machines or less. The tax rate on facilities licensed to offer slot machines after the effective date of the bill is 30%, and decreases to 25% effective July 1, 2017.
- Reduces the maximum number of slot machines that a facility may make available for play from 2,000 machines to 1,850 machines.
- Removes a prohibition against offering complimentary or reduced cost alcoholic beverages to persons playing slot machines and a prohibition against allowing an automated teller machine in the gaming area of a facility of a slot machine licensee.

Video Race Terminals

The proposed committee substitute does not authorize any facility in the state to offer video race terminals.

Blackjack at Pari-Mutuel Facilities

The bill authorizes certain pari-mutuel facilities in Miami-Dade and Broward Counties to offer house banked blackjack. Each such facility may have up to 25 tables of blackjack, and the maximum bet that may be placed is $25. The tax rate is 10% of gross revenues.

Current Situation: Cardrooms

Cardrooms in Florida

Cardrooms were authorized at pari-mutuel facilities in 1996.[99] 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 they applied for the initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances.[100]

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.

Designated Player Games

Designated player games card games (also known as player-banked games) are card games where a designated player occupies the position of the dealer in a game. Other players compete against the designated player individually to determine the game's winner, and the designated player collects or pays out winnings from their own bank.

[99] s. 20, Ch. 96-364, Laws of Fla.
[100] s. 849.086(5)(b), F.S.

Several pari-mutuel facilities that also operate cardrooms in the state are currently operating designated player games. A pari-mutuel facility that operates a cardroom may only offer authorized games within the cardroom. An "authorized game" is defined as "a game or series of games of poker or dominos which are played in a nonbanking manner."[101] The licensed cardrooms are prohibited from offering "banked" card games in which players bet against the house.

Under the Division's rule 61D-11.002, cardroom operators are required to determine house rules for the operation of designated player games.[102] The house rules must establish uniform requirements to be a designated player, ensure that the opportunity to be the dealer rotates around the table, and not require the designated player to cover all wagers.[103] From the play of designated player games, the pari-mutuel facilities have seen revenues at some facilities increase by up to 20 percent.[104]

In October 2015, the Division proposed rules to ban designated player games and delete the requirements for operation of designated player games.[105] After a rule challenge to the proposed rule, the Division revised its proposed rules to remove the prohibition against designated player games, but the proposed rule still deletes the cardroom requirements for designated player games.[106] In January 2016, the Division issued administrative complaints against seven pari-mutuel facilities, stating that the facilities are "operating a banking game or a game not specifically authorized" by state law.[107] The results of the complaints are pending.

The Seminole Compacts and Designated Player Games

The 2010 Compact specifically limits the type of banking games that may be authorized or offered in Florida without violating the exclusivity provisions of the Compact; however, it is unclear if a designated player game would violate these provisions and the 2010 Compact does not specifically address designated player games.

The 2015 Compact provides that games are banked if banked by either the house or player; however, "designated player games" as defined by the 2015 Compact do not violate the exclusivity provisions, so long as the designated player game is operated under certain conditions.

Under the 2015 Compact a "designated player" is "the player identified by a button as the player in the dealer position, seated at any traditional player position in a Designated Player Game, who is not required to cover all wagers."

Under the 2015 Compact, the term "designated player game" means "games consisting of at least three (3) cards in which players compare their cards only to those cards of the player in the dealer position, who also pays winners and collects from losers. The ranking of poker hands in such game(s) shall be consistent with the definition of traditional poker hand rankings provided in Hoyle's Modem Encyclopedia of Card Games, 1974 Ed."

The conditions under which designated player games are authorized include:[108]

- The maximum wager in any game may not exceed $25.
- The designated player must occupy a playing position at the table

[101] s. 849.086, F.S.
[102] Rule 61D-11.002, F.A.C.
[103] *Id*.
[104] Kam, Dara, *Gambling operators outraged over card games*, Sun Sentinel, *available at* http://www.sun-sentinel.com/business/consumer/fl-nsf-gambling-card-games-illegal-20151203-story.html, (last visited Feb. 4, 2016).
[105] Proposed Rule 61D-11.002, F.A.C. (Published in F.A.R. Oct. 19, 2015).
[106] Proposed Rule 61D-11.002, F.A.C. (Notice of Change. Jan. 15, 2016).
[107] Kam, Dara, *State targets pari-mutuels over card games*, Tampa Bay Business Journal, *available at* http://www.bizjournals.com/tampabay/news/2016/01/27/state-targets-pari-mutuels-over-card-games.html (last visited Feb. 4, 2016) and Administrative Complaints filed by the Division (Jan. 25, 2016)(on file with the Regulatory Affairs Committee).
[108] *Id*.

- The designated player position must be offered after each hand, in a clockwise rotation, to each player.
- A player that participates as a designated player for 30 consecutive hands must play as a non-designated player for at least 2 hands before resuming play as the designated player.
- A designated player may not be required to cover more than 10 times the minimum posted bet for players seated during any one game.
- Licensed pari-mutuel facilities that offer slot machines may not offer designated player games.
- Designated player game tables offered at a licensed pari-mutuel cardroom facility may not exceed 25 percent of the total poker tables authorized at the cardroom.

Effect of the Bill: Cardrooms

Cardrooms in Florida

The bill extends the hours of operation for all cardrooms from 18 to 24 hours 7 days a week, and removes restrictions on serving free alcoholic beverages and food at such facilities.

Designated Player Poker Games

The bill defines designated player poker games and restricts which cardroom operators and licensed pari-mutuel facilities may offer designated player poker games. The bill requires cardroom operators that offer designated player poker games to run game play according to requirements in the 2015 Compact and the Division rules.

The bill authorizes the Division to approve designated player games at cardrooms only if the games would not trigger a reduction in revenue-sharing payments under the Compact.

The bill defines a "designated player" as a “player identified as the player in the dealer position, seated at a traditional player position in a designated player poker game, who pays winning players and collects from losing players, but is not required to cover all wagers.”

The bill defines a “designated player poker game" as a “game consisting of at least three cards in which the players compare their cards only to the cards of the designated player, and in which the hands are ranked consistent with the definition of traditional poker rankings provided in the 1974 edition of Hoyle’s Modern Encyclopedia of Card Games.”

The bill permits the Division to authorize cardroom operators to offer designated player poker games. The bill provides that designated player poker games offered by a cardroom operator may not make up more than 50 percent of the total authorized game tables.

The bill provides requirements for the operation of designated player games. The bill requires the designated player to occupy a playing position at the table and prohibits the cardroom from requiring a designated player to cover all wagers.

The bill prohibits a cardroom operator from serving as a designated player and from having a financial interest in a designated player.

Effect of the Bill: Other Provisions

The bill appropriates $150,000 from the Pari-Mutuel Wagering Trust Fund to the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation in the 2016-2017 fiscal year to implement the state oversight provisions of the bill.

The bill provides that all provisions of the bill are severable.

The bill provides that other than the amendments to s. 285.710(1) and 285.710(3), the amendments made by the bill are contingent upon the December 7, 2015, Gaming Compact being renegotiated,

ratified, and approved by the U.S. Secretary of the Interior. If this does not happen, none of the provisions of the bill shall become law.

The effective date of the bill is the later of July 1, 2016, or upon the approval of the December 7, 2015, Gaming Compact by the U.S. Secretary of the Interior.

B. SECTION DIRECTORY:

Section 1 amends s. 285.710, F.S., ratifying and approving the Gaming Compact between the Seminole Tribe of Florida and the State of Florida under certain conditions; superseding a prior compact; directing the Governor to cooperate with the Tribe in seeking approval of the compact from the United States Secretary of the Interior; expanding the games authorized to be conducted and the counties in which such games may be offered; providing for a portion of the amount paid by the Tribe to the state to be designated as the thoroughbred purse pool share.

Section 2 amends s. 285.710, F.S., correcting a citation.

Section 3 creates s. 546.11, F.S., providing a short title.

Section 4 creates s. 546.12, F.S., providing legislative findings related to fantasy contests.

Section 5 creates s. 546.13, F.S., providing definitions.

Section 6 creates s. 546.14, F.S., requiring licensure for contest operators, requiring payment of application and renewal fees, providing the requirements for the contents of applications for licensure, providing that certain applicants are not eligible for licensure, requiring proof of a surety bond, and permitting the Division of Regulation within the Department of Business and Professional Regulation.

Section 7 creates 546.15, F.S., requiring contest operators to adopt a number of consumer protection practices, requiring the division to contract with a third party to provide services related to the prevention of compulsive and addictive play, and granting rulemaking authority to the division.

Section 8 creates s. 546.16, F.S., providing the division with authority to enforce the provisions of the act relating to fantasy contests.

Section 9 creates s. 546.17, F.S., requiring contest operators to keep records, make them available for inspection by the division, and submit a quarterly report to the division.

Section 10 creates s. 546.18, F.S., providing civil penalties for violation of the provisions of this act or any rule promulgated pursuant thereto.

Section 11 creates s. 546.19, F.S., providing that contest operators licensed pursuant to the act and noncommercial contest operators are not subject to certain provisions regulating gambling.

Section 12 provides contest operators who apply for and are granted a license within a certain time period are exempt from penalties for offering fantasy contests before receiving a license.

Section 13 amends s. 550.002, F.S., amending and creating definitions.

Section 14 amends s. 550.01215, F.S., revising provisions for applications for pari-mutuel operating licenses.

Section 15 amends s. 550.0251, F.S.; requiring the Division to annually report to the Governor and the Legislature; specifying requirements for the content of the report.

Section 16 amends s. 550.054, F.S., requiring the Division to revoke a pari-mutuel wagering operating permit under certain circumstances; prohibiting issuance or approval of new pari-mutuel permits after a specified date; providing exceptions; authorizing a permitholder to apply to the Division to place a

permit in inactive status; revising provisions that prohibit transfer or assignment of a pari-mutuel permit; prohibiting transfer or assignment of a pari-mutuel permit or license under certain conditions; prohibiting relocation of a pari-mutuel facility, cardroom, or slot machine facility or conversion of pari-mutuel permits to a different class; providing for an exception; deleting provisions for certain converted permits.

Section 17 amends s. 550.0555, F.S., revising conditions under which certain pari-mutuel permitholders may relocate.

Section 18 repeals s. 550.0745, F.S., relating to the conversion of pari-mutuel permits to summer jai alai permits.

Section 19 amends s. 550.0951, F.S., deleting provisions for specified tax credits for a greyhound racing permitholder; revising the tax on handle for live greyhound racing and intertrack wagering if the host track is a greyhound track.

Section 20 amends s. 550.09512, F.S., providing for the revocation of certain harness horse racing permits; specifying that a revoked permit may not be reissued.

Section 21 amends s. 550.09514, F.S., deleting certain provisions that prohibit tax on handle until a specified amount of tax savings have resulted; revising purse requirements of a greyhound racing permitholder that conducts live racing.

Section 22 amends s. 550.09515, F.S., providing for the revocation of certain thoroughbred racing permits; specifying that a revoked permit may not be reissued; removing an obsolete provision.

Section 23 amends s. 550.105, F.S., requiring certain employees of multijurisdictional simulcast and interactive wagering totalisator hubs to obtain an occupations license.

Section 24 amends s. 550.1625, F.S., deleting the requirement that a greyhound racing permitholder pay the breaks tax.

Section 25 repeals s. 550.1647, F.S., relating to unclaimed tickets and breaks held by greyhound racing permitholders.

Section 26 amends s. 550.1648, F.S., revising requirements for a greyhound racing permitholder to provide a greyhound adoption booth at its facility; requiring sterilization of greyhounds before adoption; authorizing the fee for such sterilization to be included in the cost of adoption; defining the term "bona fide organization that promotes or encourages the adoption of greyhounds."

Section 27 creates s. 550.1752, F.S., providing for the creation of a purse pool for thoroughbred racing permitholders who conduct live performances, to be funded from a portion of cardroom revenues from certain permitholders.

Section 28 creates s. 550.2416, F.S.; requiring injuries to racing greyhounds to be reported within a certain timeframe on a form adopted by the Division; requiring such form to be completed and signed under oath or affirmation by certain individuals; providing penalties; specifying information that must be included in the form; requiring the Division to maintain the forms as public records for a specified time; specifying disciplinary action that may be taken against a licensee of the DBPR who fails to report an injury or who makes false statements on an injury form; exempting injuries to certain animals from reporting requirements; requiring the Division to adopt rules;

Section 29 amends s. 550.26165, F.S., conforming a cross-reference.

Section 30 amends s. 550.334, F.S., revising a requirement for quarter horse racing permitholders to conduct intertrack wagering.

Section 31 amends s. 550.3345, F.S., revising provisions for a permit previously converted from a quarter horse racing permit to a limited thoroughbred racing permit.

Section 32 amends s. 550.3551, F.S., revising conditions for receiving and accept wagers on out-of-state broadcasts of races and games; deleting a requirement that a harness permitholder conduct a certain number of races; deleting a provision that limits the number of out-of-state races on which wagers are accepted by a greyhound racing permitholder.

Section 33 amends s. 550.375, F.S., removing requirements related to a thoroughbred racing permitholder's application; conforming a cross-reference.

Section 34 amends s. 550.615, F.S., revising provisions relating to intertrack wagering.

Section 35 amends s. 550.6305, F.S., revising provisions requiring certain simulcast signals be made available to certain permitholders; providing for certain permitholders of a converted permit to accept wagers on certain rebroadcasts.

Section 36 amends s. 550.6308, F.S.; revising the number of days of thoroughbred horse sales required to obtain a limited intertrack wagering license; removing restrictions on the times at which a limited intertrack wagering licensee may offer intertrack wagering revising provisions for such wagering.

Section 37 creates s. 550.6347, F.S., providing definitions, regulations, and taxation for multijurisdictional simulcast and interactive wagering totalisator hubs.

Section 38 amends s. 551.101, F.S., revising provisions that authorize slot machine gaming at certain facilities.

Section 39 amends s. 551.102, F.S., revising the definition of the terms "eligible facility" and "slot machine licensee" for purposes of provisions relating to slot machines.

Section 40 amends s. 551.104, F.S., revising provisions for approval of a license to conduct slot machine gaming; specifying that certain pari-mutuel permitholders are not required to conduct a full schedule of live racing to receive and maintain a license to conduct slot machine gaming.

Section 41 creates s. 551.1041, F.S.; authorizing the Division to grant a slot machine license to a slot machine facility under certain circumstances; providing requirements for selection of the facility to receive such a license.

Section 42 creates s. 551.1044, F.S., authorizing banked blackjack at certain facilities licensed to offer slot machines in Miami-Dade and Broward Counties and providing for taxation of revenues received from blackjack operations.

Section 43 amends s. 551.106, F.S., revising the tax rate on slot machine revenues and providing a guaranteed minimum on tax revenues from new slot machines licensees.

Section 44 amends s. 551.114, F.S., revising the maximum number of slot machines that may be available; limiting the number of slot machines available for play at certain facilities; revising requirements for designated slot machine gaming areas; requiring certain permitholders to locate their slot machine gaming area in certain locations.

Section 45 amends s. 551.116, F.S., revising the times that a slot machine gaming area may be open.

Section 46 amends s. 551.121, F.S., allowing complimentary or reduced-cost alcoholic beverages to be served to persons playing slot machines.

Section 47 amends s. 849.086, F.S., revising definitions; defining the terms "designated player" and "designated player poker game"; exempting certain permitholders from a requirement that they conduct

a minimum number of live races as a condition of cardroom licensure under certain conditions; revising times that a cardroom may operate; providing for the Division to authorize designated player poker games in certain cardrooms; providing requirements for such games; providing that such games may be authorized by the Division only if they would not trigger a reduction in certain payments; deleting provisions relating to a referendum election for the transfer of certain cardroom gaming licenses.

Section 48 provides that Division shall revoke any permit to conduct pari-mutuel wagering if the permitholder has not conducted live events within the 24 month immediately preceding the effective date of this act, unless the permit was issued under s. 551.1041, F.S., or if the permit was issued after July 1, 2015. A permit revoked under this section may not be reissued.

Section 49 provides severability.

Section 50 provides an appropriation to the Department of Business and Professional Regulation to implement the provisions of this bill.

Section 51 provides that, other than the sections directing that the compact is ratified under certain circumstances, all provisions of the bill are contingent upon the compact becoming effective.

Section 52 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See *FISCAL COMMENTS*.

2. Expenditures:

   See *FISCAL COMMENTS*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See *FISCAL COMMENTS.*

2. Expenditures:

   See *FISCAL COMMENTS*.

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 certain permitholders, and limited intertrack wagering licensees, it may reduce private sector costs through increased flexibility.

D. FISCAL COMMENTS:

The Revenue Estimating Conference (REC) has not evaluated this bill, but has evaluated some components of this bill found in similar legislation. The fiscal impacts below are a combination of REC and staff estimates.

The fiscal impacts of the bill are dependent on whether or not the gaming compact with the Seminole Tribe is ratified with modifications as required by the bill. If a modified compact is not ratified then the bill will have no revenue or expenditure impact compared to current baseline revenue estimates. If the modified compact is ratified then the estimated revenue impacts are as displayed in the table below.

	General Revenue		State Trust Funds		Local Govt.		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2015-16	102.0				3.2		105.2	-
2016-17	163.2	222.4	(12.0)	74.2	5.3	3.4	156.5	300.0
2017-18	178.8	222.4	(19.2)	74.2	4.5	3.4	164.1	300.0
2018-19	191.3	222.6	21.3	74.2	2.9	3.4	215.5	300.2
2019-20	211.5	222.7	31.7	74.2	3.1	3.4	246.3	300.3
2020-21	255.8	222.7	32.0	74.2	4.5	3.4	292.2	300.3

In addition to the estimated impacts shown in the table, the provisions relating to authorization and regulation of fantasy sports contests and advance deposit wagering will result in new state expenditure requirements, but are also expected to generate additional revenues. The magnitude of both the expenditure and revenue impacts is unknown at present.

The bill appropriates $150,000 from the Pari-Mutuel Wagering Trust Fund to the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation in the 2016-2017 fiscal year to implement the state oversight provisions of the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   Retroactive Legislation

   The bill directs the Division to revoke permits that have not been used for the conduct of pari-mutuel wagering on horseracing, jai alai and greyhound racing, as defined by the bill, during the 24 months preceding the effective date of this 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."

   Compensation Claims

   The bill directs the Division 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."[109] Thus, Florida courts have found no unconstitutional taking in the retroactive application of statutes requiring

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

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.[110]

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."[111] 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 … ."[112] 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."[113]

Furthermore, compensation may not be warranted if the Legislature is deemed to have exercised its police powers, rather than powers of eminent domain.[114] "[T]he Government as condemnor 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."[115] Thus, the loss of licenses to sell alcoholic beverages, for example, is not compensable.[116]

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."[117]

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 permitholders may be able to obtain a license to conduct pari-mutuel wagering events, which would require adequate zoning and facilities.

B. RULE-MAKING AUTHORITY:

The bill provides DBPR rulemaking authority to adopt rules to enforce various provisions of the act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 29, 2016, the Finance & Tax Committee adopted a number of amendments to the proposed committee substitute and reported it favorably. The amendments:

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[110] *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).
[111] *Solimena v. State, Dept. of Business Regulation, Division of Pari-Mutuel Wagering,* 402 So.2d 1240 (Fla. 3rd DCA 1981).
[112] *Hialeah Race Course v. Gulfstream Park Racing Ass'n*, 37 So.2d 692, 694 (Fla. 1948).
[113] *State ex rel. Biscayne Kennel Club v. Stein*, 130 Fla. 517, 520 (Fla. 1938).
[114] *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.").
[115] *U. S. v. Fuller*, 409 U.S. 488, 491-492, 93 S.Ct. 801, 804 (U.S. Ariz.1973).
[116] *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).
[117] *Carney v. Attorney General*, 451 Mass. 803 (2008).

- Corrected a number of incorrect cross references and grammatical errors;
- Clarified where revenues from application and renewal fees for fantasy contest operators are to be deposited and how they are to be used;
- Clarified where revenues from the taxation of pari-mutuel wagers placed through multijurisdictional simulcast and interactive wagering totalisator hubs are to be deposited;
- Correct provisions related to decoupling for some permitholders;
- Require the Division of Pari-Mutuel Wagering to fine, suspend, or revoke the license of a permitholder found to have intentionally injured a greyhound;
- Clarified what happens if the total number of slot machines in the state exceed 16,000

This analysis has been updated to reflect the amendments.