The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 374
INTRODUCER:	Regulated Industries Committee and Senator Young
SUBJECT:	Fantasy Contests
DATE:	January 24, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	**Fav/CS**
2.	Kraemer	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 374 creates s. 546.13, F.S. to authorize certain fantasy contests in which participants must pay an entry fee. Fantasy contest operators and their employees and agents may not be participants in a fantasy contest. Prizes and awards must be established and disclosed before the contest. Winning outcomes must reflect knowledge and skill of participants and be determined predominantly by statistical results of performances of individuals, including athletes in sporting events. No winning outcome may be based on performances in collegiate, high school, or youth sporting events.

The bill also provides that the Department of Business and Professional Regulation may not regulate and certain gambling laws set forth in Ch. 849, F.S., do not apply to a fantasy contest conducted by a fantasy contest operator or a commissioner who participates in fewer than ten contests each calendar year and distributes all contest entry fees as prizes.

CS/SB 374 may have a significant negative fiscal impact on state government, if fantasy contests are gaming, constitute Class III gaming under federal law, and constitute, under the 2010 Gaming Compact between the Seminole Tribe of Florida and the State of Florida, *new* Class III gaming not in operation as of February 1, 2010, in Florida. See Section V, Fiscal Impact Statement.

The bill provides an effective date of October 1, 2018.

II. Present Situation:

Background

The operation of fantasy sports activities in Florida has recently received significant publicity, much like the operation of internet cafes in recent years. Many states are now evaluating the status of fantasy gaming activities in their jurisdictions,[1] as there are millions of participants.[2]

A fantasy game typically has multiple players who select and manage imaginary teams whose players are actual professional sports players. Fantasy game players compete against one another in various formats, including weekly leagues among friends and colleagues, season-long leagues, and on-line contests (daily and weekly) entered by using the Internet through personal computers or mobile telephones and other communications devices. There are various financial arrangements among players and game operators. The term "commissioner" has been used in the context of fantasy baseball leagues to denote a person who manages a fantasy baseball league, establishes league rules, resolves disputes over rule interpretations, publishes league standings, or selects the Internet service for publication of league standings.[3]

Florida law does not specifically address fantasy contests. Section 849.14, F.S.,[4] provides that a person who wagers any "thing of value" upon the result of a contest of skill or endurance of human or beast, or who receives any money wagered, or who knowingly becomes the custodian of money or other thing of value that is wagered, is guilty of a second degree misdemeanor.[5]

In 2013, Spectrum Gaming Group, as part of a Gambling Impact Study prepared for the Florida Legislature, analyzed data related to participation by adults in selected activities.[6] Based on 2012 U.S. Census data, participation in fantasy sports leagues in the prior 12 months (nearly nine million adults), and those who participate two or more times weekly (nearly three million adults), was greater than attendance at horse races in the prior 12 months (6,654,000 adults) with 159,000 attending two or more times weekly.[7]

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[1] *See* Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, Journal of Sports & Entertainment Law, Harvard Law School Vol. 3 (Jan. 2012) (Edelman Treatise), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272 (last visited Nov. 27, 2017), and Jonathan Griffin, *The Legality of Fantasy Sports*, National Conference of State Legislatures Legisbrief (Sep. 2015) (on file with the Committee on Regulated Industries).

[2] According to the Fantasy Sports Trade Association, which states it represents the interests of 57 million fantasy sports players, fantasy sports leagues were originally referred to as "rotisserie leagues" with the development of Rotisserie League Baseball in 1980, by magazine writer/editor Daniel Okrent, who met and played it with friends at a New York City restaurant La Rotisserie Francaise. *See* http://fsta.org/about/history-of-fsta/ (last visited Nov. 27, 2017).

[3] *See* Bernhard & Eade, *Gambling in a Fantasy World: An Exploratory Study of Rotisserie Baseball Games*, 9 UNLV Gaming Research & Review Journal Issue 1, at 30, at http://digitalscholarship.unlv.edu/grrj/vol9/iss1/3/, (last visited Nov. 27, 2017).

[4] *See* Fla. AGO 91-03 (Jan. 8, 1991), at http://myfloridalegal.com/. . . 91-03 (last visited Nov. 27, 2017).

[5] A conviction for a second degree misdemeanor may subject the violator to a definite term of imprisonment not exceeding 60 days, and a fine not exceeding $500. *See* ss. 775.082 and 775.083, F.S.

[6] *See* Spectrum Gaming Group Gambling Impact Study (Gambling Impact Study), at http://www.leg.state.fl.us/gamingstudy/docs/FGIS_Spectrum_28Oct2013.pdf (Oct. 28, 2013) (last visited Nov. 27, 2017).

[7] *Id.*, Figure 22 at page 67.

In general, gambling is illegal in Florida.[8] Chapter 849, F.S., prohibits keeping a gambling house,[9] running a lottery,[10] or the manufacture, sale, lease, play, or possession of slot machines.[11] However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[12] wagering at licensed greyhound and horse tracks and jai alai frontons;[13]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[14] and
- Cardrooms[15] at certain pari-mutuel facilities.[16]

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.[17]

The 1968 State Constitution states that "[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[18] A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds are paid by the lottery to the Educational Enhancement Trust Fund (EETF) for uses pursuant to annual appropriations by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.[19]

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[20] bingo,[21] charitable drawings, game promotions (sweepstakes),[22] and bowling

[8] *See* s. 849.08, F.S.
[9] *See* s. 849.01, F.S.
[10] *See* s. 849.09, F.S.
[11] Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S.
[12] Pari-mutuel" is defined in Florida law 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. *See* s. 550.002(22), F.S.
[13] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[14] *See* ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.
[15] Section 849.086, F.S. Section 849.086(2)(c), F.S., defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[16] The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2017-2018 Operating Licenses to operate 26 cardrooms. *See* http://www.myfloridalicense.com/dbpr/pmw/PMW-PermitholderOperatingLicenses--2017-2018.html (last visited Nov. 27, 2017).
[17] *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." *See also Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936).
[18] 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.
[19] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.
[20] *See* s. 849.085, F.S.
[21] *See* s. 849.0931, F.S.
[22] *See* s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

tournaments.[23] The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.[24]

Florida Attorney General Opinions on Fantasy Sports Leagues and Contests Involving Skill

In 1991, Florida Attorney General Robert A. Butterworth issued a formal opinion[25] evaluating the legality of groups of football fans (contestants) paying for the right to manage a team under certain specified conditions. The Attorney General stated:

> You ask whether the formation of a fantasy football league by a group of football fans in which contestants pay $100 for the right to "manage" one of eight teams violates the state's gambling laws. You state that these teams are created by contestants by "drafting" players from all current eligible National Football League (NFL) members. Thus, these fantasy teams consist of members of various NFL teams.
>
> According to your letter, each week the performance statistics of the players in actual NFL games are evaluated and combined with the statistics of the other players on the fantasy team to determine the winner of the fantasy game and their ranking or standing in the fantasy league. No games are actually played by the fantasy teams; however, all results depend upon performance in actual NFL games. Following completion of the season, the proceeds are distributed according to the performance of the fantasy team.

In the contest described in the opinion, each contestant paid $100 to participate in the fantasy football league and manage one of eight teams. The resulting $800 in proceeds were used for prizes. The prizes were based upon the performance of the individual professional football players in actual games. Attorney General Butterworth determined the proceeds qualified as a "stake, bet or wager" on the result of a contest of skill and, as a result, the operation of the fantasy sports leagues violated s. 849.14, F.S., relating to unlawful betting on the result of a trial or contest of skill.[26]

The 1991 opinion cited *Creash v. State*, 179 So. 149, 152 (Fla. 1938). In *Creash*, the Florida Supreme Court held:

> In gamblers' lingo, 'stake, bet or wager' are synonymous and refer to the money or other thing or value put up by the parties thereto with the understanding that one or the other gets the whole for nothing but on the turn of a card, the result of a race, or some trick of magic. A 'purse, prize, or premium' has a broader significance. *If offered by one (who in no way competes for it) to the successful contestant in a [feat] of mental or physical skill, it is not generally condemned as*

[23] *See* s. 849.141, F.S.
[24] *See* s. 546.10, F.S.
[25] *See* Fla. AGO 91-03 (Jan. 8, 1991), at http://myfloridalegal.com/. . . 91-03 (last visited Nov. 27, 2017).
[26] *Id*.

> *gambling*, while if contested for in a game of cards or other games of chance, it is so considered. [Citation omitted.] *It is also banned as gambling if created as in this case by paying admissions to the game, purchasing certificates, or otherwise contributing to a fund from which the 'purse, prize, or premium' contested for is paid*, and wherein the winner gains, and the other contestants lose all.[27] [Emphasis added.]

However, in a 1990 opinion, Attorney General Butterworth, again citing *Creash v. State*, determined that a contest of skill (such as a hole-in-one golf contest) "where the contestant pays an entry fee, which *does not make up* (i.e., create) *the prize*, for the opportunity to win a valuable prize by the exercise of skill, *did not violate the gambling laws of [Florida]*."[28] (Emphasis in original.) That 1990 opinion reasoned, "[t]hus, the payment of an entry fee to participate in a contest of skill when the sponsor of the contest does not participate in the contest of skill and where the prize money does not consist of entry fees would *not* appear to be a 'stake, bet or wager'" in violation of s. 849.14, F.S., relating to gambling. (Emphasis added.)[29]

Gaming Compact with Seminole Tribe of Florida

In 2010, a gaming compact (2010 Gaming Compact) between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida (State) was ratified by the Legislature.[30] Pursuant to Chapter 285, F.S., 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 2010 Gaming Compact.[31]

The 2010 Gaming Compact provides for revenue sharing in consideration for the exclusive authority granted to the Seminole Tribe to offer banked card games on tribal lands and to offer slot machine gaming outside Miami-Dade and Broward counties. The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation (DBPR) carries out the State's oversight responsibilities under the 2010 Gaming Compact.[32]

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[27] *See Creash v. State*, 179 So. 149, 152 (Fla. 1938). Because CS/SB 374 requires entry fees (rather than a bet or wager) be paid by fantasy contest participants, the *Creash* case suggests that such fantasy contests do not constitute gaming.
[28] *See* Fla. AGO 90-58 (Jul. 27 1990) (last visited Nov. 27, 2017).
[29] *Id.*
[30] The 2010 Gaming Compact was executed by the Governor and the Seminole Tribe on April 7, 2010, ratified by the Legislature, effective April 28, 2010, and approved by U.S. Secretary of the Interior, pursuant to the Indian Gaming Regulatory Act of 1988, on June 24, 2010. It took effect when published in the Federal Register on July 6, 2010. The 20-year term of the 2010 Gaming Compact expires July 31, 2030, unless renewed. Section 285.710(1)(f), F.S., designates the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation as the "state compliance agency" having authority to carry out the state's oversight responsibilities under the 2010 Gaming Compact. *See* http://www.flsenate.gov/PublishedContent/Committees/2016-2018/RI/Links/2015_Gaming_Compact,_Chart,_and_Letter_from_Governor_Scott.pdf (last visited Jan. 25, 2018).
[31] *See* s. 285.710, F.S., especially subsections (3), (13), and (14). The seven tribal locations where gaming is authorized by the 2010 Gaming Compact are: (1) Seminole Hard Rock Hotel & Casino—Hollywood (Broward); (2) Seminole Indian Casino—Coconut Creek (Broward); (3) Seminole Indian Casino—Hollywood (Broward); (4) Seminole Hard Rock Hotel & Casino—Tampa (Hillsborough); (5) Seminole Indian Casino—Immokalee (Collier); (6) Seminole Indian Casino—Brighton (Glades); and (7) Seminole Indian Casino—Big Cypress (Hendry).
[32] *See* s. 285.710(1)(f), F.S.

Except for gaming facilities operating in accordance with the 2010 Gaming Compact with the Seminole Tribe, free-standing, commercial casinos are not authorized, and gaming activity, other than what is expressly authorized, is illegal.

Litigation Concerning the 2010 Compact and Banked Card Games

The State and the Seminole Tribe were parties to litigation in federal court relating to the offering of table games by the Seminole Tribe after July 31, 2015. Separate lawsuits were filed by each party against the other, and the cases were consolidated. The Seminole Tribe alleged in its complaint that:

- It had authority to conduct banked card games for the 2010 Gaming Compact's full 20-year term; and
- The State breached its duty to negotiate with the Seminole Tribe in good faith.

The State alleged that the Seminole Tribe's:

- Conduct of banked card games violated the 2010 Gaming Compact; and
- Conducting the games violated the Indian Gaming Regulatory Act (IGRA) though this claim was later dropped by the State.

On November 9, 2016, U.S. District Court Judge Robert L. Hinkle issued an Opinion on the Merits,[33] which held:

- The Seminole Tribe may operate banked card games at all seven of its facilities (rather than the five facilities at which banked card games had been allowed since 2010) through the entire 20-year term of the 2010 Gaming Compact (i.e., until 2030) because the State permitted others to offer banked card games (i.e., pari-mutuel cardrooms);
- Sovereign immunity barred the court from considering whether the State had failed to negotiate in good faith as to: 1) authorizing roulette and craps; and 2) extending the 2010 Gaming Compact beyond its 20-year term; and
- A ruling on the issue of whether electronic forms of blackjack are also a banked card game is unnecessary, as the issue was too close to resolve when a ruling was not essential to the outcome of the case.

Settlement of the Litigation and Establishment of Forbearance Period

Subsequent to the DBPR's appeal of Judge Hinkle's decision,[34] on July 5, 2017, the Seminole Tribe and the DBPR entered into a Settlement Agreement and Stipulation (2017 Settlement).[35] The parties agreed to undertake certain actions.

The State agreed to dismiss the pending appeal, and upon issuance of the final order of dismissal of the appeal, the Seminole Tribe agreed to release the State from all claims by the Tribe for past

[33] *See Seminole Tribe of Florida v. State of Florida,* 219 F.Supp. 3d 1177 (N.D. Fla. Nov. 9, 2016), Case No.: 4:15-cv-516-RH/CAS, Document 103.
[34] *See Seminole Tribe of Florida v. State of Florida*, 219 F.Supp. 3d 1177 (N.D. Fla. Jan. 19, 2017), Case No.: 4:15-cv-516-RH/CAS, Document 120.
[35] *See* Settlement Agreement and Stipulation (2017 Settlement) (July 5, 2017) (on file with the Senate Committee on Regulated Industries).

Revenue Share Payments,[36] based on the operation of player-banked games which use a designated player (Designated Player Games) or electronic forms of blackjack (Electronic Table Games) in Florida.

The Seminole Tribe also agreed it would not seek the return of funds associated with tribal gaming paid to and segregated by the State during the pendency of the federal litigation, granting the State unencumbered use of the segregated funds.[37]

As to the continued operation of banked card games (i.e., Designated Player Games operated as described in Judge Hinkle's decision), the Seminole Tribe agreed to delay taking certain actions until after the last day of the month that the Legislature adjourns[38] its 2018 legislative session (the Forbearance Period). The Seminole Tribe agreed not to:

- Suspend Revenue Share Payments; or
- Deposit Revenue Share Payments into an escrow account in accordance with Part XII of the 2010 Gaming Compact.

The Seminole Tribe also agreed not to initiate an action asserting that it is entitled, based on the continued operation of Designated Player Games or Electronic Table Games in the State, to deposit Revenue Share Payments into an escrow account in accordance with Part XII of the 2010 Gaming Compact, provided:

> the State takes aggressive enforcement action [Aggressive Enforcement Requirement] against the continued operation of banked card games, including Designated Player Games that are operated in a banked game manner, as described in [Judge Hinkle's decision], and no other violations of the Tribe's exclusivity occur during the Forbearance Period.[39]

The Aggressive Enforcement Requirement is also imposed upon the State respecting Revenue Share Payments made by the Seminole Tribe during the Forbearance Period. The deposit of such payments into the General Revenue Fund, allowing unencumbered use by the State without the Seminole Tribe seeking the return of such payments, is contingent upon meeting the Aggressive Enforcement Requirement.[40]

The 2017 Settlement does not define the term "aggressive enforcement action." The DBPR has filed five administrative complaints against cardroom operators alleging the violation of s. 849.086(12)(a), F.S., due to the operation of a banking game or a game not specifically

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[36] Revenue Share Payments are the periodic payments to the State by the Seminole Tribe, based on the Tribe's Net Win. Net Win is defined as total receipts from the play of authorized tribal gaming in Florida, less all prizes, free play, or promotional credits. *See* paragraphs U and X of Part III of the 2010 Gaming Compact at page 11 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Nov. 27, 2017).

[37] *See* the 2017 Settlement at page 6.

[38] Should the 2018 legislative session be adjourned as anticipated on March 9, 2018, the Forbearance Period will end on March 31, 2018.

[39] The Seminole Tribe agreed to follow the process set forth in paragraph A of Part XII of the 2010 Gaming Compact, to address any new violation of the Tribe's exclusivity occurring during the Forbearance Period, due to a court decision or administrative agency ruling or decision. *See* the 2017 Settlement at page 7.

[40] *See* the 2017 Settlement at page 7.

authorized by Florida law.[41] In each case, the parties have temporarily delayed pursuit of administrative hearings in favor of informal conferences to resolve the pending enforcement actions.[42]

Internet Gaming under the 2010 Gaming Compact and the Proposed 2015 Gaming Compact

The 2010 Gaming Compact provides that any change in state law to allow internet/on-line gaming (or any functionally remote gaming system that permits gaming from a home or any other location other than a casino or other commercial gaming facility) could impact the payment of certain guaranteed revenue sharing payments.[43] However, the guaranteed revenue sharing payments of $1 billion due under the 2010 Gaming Compact have been paid in full by the Seminole Tribe. Therefore, a change in state law to allow internet/on-line gaming results in no financial impact to the State under the 2010 Gaming Compact.

A proposed gaming compact transmitted by the Governor in 2015 for consideration by the Legislature (the Proposed 2015 Gaming Compact) has not been ratified.[44] However, if fantasy contests are classified as internet/on-line gaming, authorizing fantasy contests in Florida would trigger an impact to the payment of guaranteed revenue sharing amounts in accordance with the 2015 Proposed Gaming Compact.[45]

The term "internet" is not defined in either the 2010 Gaming Compact or the Proposed 2015 Gaming Compact; however, the term "Internet" is defined in the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) (discussed below).[46]

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[41] The respondent, filing date, and DBPR Case No. for each complaint are: 1) Pensacola Greyhound Park, LLP (8.17.2017; Case No. 2017-040490); 2) Sarasota Kennel Club, Inc. (8.24.2017; Case No. 2017-041784); 3) Tampa Bay Downs, Inc. (9.15.2017; Case No. 2017-044518); 4) Dania Entertainment Center, LLC (9.25.2017; Case No. 2017-045538); and 5) Investment Corporation of Palm Beach (10.25.2017; Case No. 2017-050956) (on file with the Committee on Regulated Industries).

[42] E-mail from J. Morris, Legislative Affairs Director, DBPR, to R. McSwain, Staff Director, Committee on Regulated Industries (Nov. 2, 2017) (on file with the Committee on Regulated Industries).

[43] Enactment of state law to allow internet or on-line gaming could have impacted the $1 billion guaranteed revenue sharing payable through Year 5 of the 2010 Gaming Compact, if the Seminole Tribe's Net Win at all of its casinos dropped more than five percent (5%) below its Net Win from the previous twelve-month period, unless the decline in Net Win was due to acts of God, war, terrorism, fires, floods, or accidents causing damage to or destruction of one or more of the tribal casinos, or the Seminole Tribe was authorized by law to offer internet/on-line gaming. *See* paragraph B.3. of Part XI of the 2010 Gaming Compact at http://www.flsenate.gov/. . . RI/Links/Gaming Compact between The Seminole Tribe of Florida and the State of Florida.pdf (last visited Nov. 27, 2017).

[44] *See* s. 285.712, F.S. The Governor is the designated state officer responsible for negotiating and executing tribal-state gaming compacts with federally recognized Indian tribes. To be effective, a proposed gaming compact must be ratified by the Senate and by the House, by a majority vote of the members present. *See* s. 285.712(3), F.S. The Proposed 2015 Gaming Compact, comparison chart, and transmittal letter from Governor Scott, are available for review on the Florida Senate Regulated Industries Committee website. *See* http://www.flsenate.gov/PublishedContent/Committees/2016-2018/RI/Links/2015_Gaming_Compact,_Chart,_and_Letter_from_Governor_Scott.pdf (last visited Jan. 25, 2018).

[45] Paragraph C.10. of Part XII of the proposed 2015 Gaming Compact states that the Seminole Tribe would instead would make payments based on the percentages set forth in paragraph B.1.(c) of Part XI. Such financial consequences to the State would not apply if the Tribe offers internet gaming to players in Florida that permits a person to game from home or any other location that is remote from any of the Tribe's facilities, as an authorized Class III gaming activity or as authorized by Florida law.

[46] UIGEA defines the term "Internet" as the international computer network of interoperable packet switched data networks. *See* 31 U.S.C. s. 5362(5).

The Gaming Compacts and Class III Gaming under the Indian Gaming Regulatory Act

Fantasy contests, if classified as Class III gaming, also could impact the revenue sharing provisions of both the 2010 Gaming Compact[47] and the Proposed 2015 Gaming Compact.[48] Under both compacts if fantasy contests are a form of new Class III gaming in Florida, payments due to the State under the compacts would cease.[49]

Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA).[50] The 2010 Gaming Compact authorizes the Seminole Tribe to conduct specified Class III gaming activities at its seven tribal facilities in Florida.[51]

Under IGRA, gaming is categorized in three classes:

- **Class I** gaming means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations;
- **Class II** gaming includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo, and certain non-banked card games if not explicitly prohibited by the laws of the state and if played in conformity with state law; and
- **Class III** gaming includes all forms of gaming that are not Class I or Class II gaming, such as banked card games (such as baccarat, chemin de fer, and blackjack(21), casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.[52]

If fantasy contests are gaming, constitute Class III gaming under federal law, and constitute, under the 2010 Gaming Compact and the Proposed 2015 Gaming Compact, *new* Class III gaming not in operation as of February 1, 2010, or July 1, 2015, respectively, in Florida, authorizing fantasy contests in Florida (i.e., additional Class III gaming) would violate the exclusivity provisions in the 2010 Gaming Compact and the Proposed 2015 Gaming Compact. As a result, certain revenue sharing requirements would not apply and the Tribe would be authorized to offer similar internet/on-line gaming.

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[47] *See* paragraph A of Part XII of the 2010 Gaming Compact at http://www.flsenate.gov/. . .RI/Links/Gaming Compact between The Seminole Tribe of Florida and the State of Florida.pdf (last visited Nov. 27, 2017).
[48] *See* paragraph A of Part XII of the 2015 Gaming Compact at http://www.flsenate.gov/PublishedContent/Committees/2016-2018/RI/Links/2015_Gaming_Compact,_Chart,_and_Letter_from_Governor_Scott.pdf (last visited Jan. 25, 2018).
[49] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Nov. 27, 2017).
[50] *See* Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq.*
[51] *See* paragraph F of Part III of the 2010 Gaming Compact at http://www.flsenate.gov/. . .RI/Links/Gaming Compact between The Seminole Tribe of Florida and the State of Florida.pdf (last visited Nov. 27, 2017). The Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The 2010 Gaming Compact was approved by the U.S. Department of the Interior effective July 6, 2010. *See* 75 Fed. Reg. 38833-38834 at https://www.gpo.gov/fdsys/pkg/FR-2010-07-06/pdf/2010-16213.pdf (last visited Nov. 27, 2017). *See* http://www.flsenate.gov/. . .RI/Links/Gaming Compact between The Seminole Tribe of Florida and the State of Florida.pdf (last visited Nov. 27, 2017).
[52] *See* Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq.*

In a letter to Senator Travis Hutson and Representative Mike La Rosa dated December 5, 2017,[53] Jim Shore, General Counsel for the Seminole Tribe, indicated:

> The Tribe believes the games permitted by these bills [HB 223 and SB 374 (Fantasy Contests), and SB 840 (Gaming)] would violate the Tribe's exclusivity, as set forth in Part XII of the 2010 Gaming Compact between the State and Tribe. By providing this notice, the Tribe hopes to avoid a situation where the State enacts legislation that inadvertently violates the Tribe's exclusivity. That said, the Tribe and the State have discussed the issue of fantasy sports contests in previous compact negotiations and the Tribe remains willing to do so now. However, federal law requires that any reduction in the Tribe's exclusivity must be balanced by some additional consideration from the State. Without such an agreement, the 2010 Gaming Compact would allow the Tribe to cease all revenue sharing payments to the State based on the expanded gaming contemplated by these bills.

The National Indian Gaming Commission (commission) issued an opinion dated March 13, 2001,[54] relating to a sports betting game proposed for future play in Arizona and California via the Internet. In that sports betting game, players could wager upon various sporting *events*, including NFL football, baseball, golf, and the Olympics. The commission determined that game to be Class III gaming because it was not included within the definitions of Class I or Class II gaming under IGRA.

The Professional and Amateur Sports Protection Act of 1992 (PASPA)

In 1992, the U.S. Congress enacted the Professional and Amateur Sports Protection Act (PASPA),[55] which provides that it is unlawful for a governmental entity or any person to sponsor, operate, advertise, or promote:

> a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.[56]

The prohibited activity is generally known as "sports betting." Governmental entities are also prohibited from licensing such activities or authorizing them by law or compact.[57] However,

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[53] *See* Letter from Jim Shore, General Counsel for the Seminole Tribe, to Senator Travis Hutson and Representative La Rosa (Dec. 5, 2017) (on file with the Senate Committee on Regulated Industries).
[54] *See* https://www.nigc.gov/images/uploads/game-opinions/WIN%20Sports%20Betting%20Game-Class%20III.pdf (last visited Nov. 27, 2017).
[55] *See* 28 U.S.C. ss. 3701-3704 (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Nov. 27, 2017).
[56] *See* 28 U.S.C. s. 3702 (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Nov. 27, 2017).
[57] *Id*.

PASPA does not apply to pari-mutuel animal racing or jai alai games.[58] It does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering conducted by a governmental entity between January 1, 1976, and August 31, 1990.[59]

The prohibition against sports betting also does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering lawfully conducted, where such activity was authorized by law on October 2, 1991, and was conducted in a state or other governmental entity at any time between September 1, 1989, and October 2, 1991.[60]

In a case pending before the United States Supreme Court, the State of New Jersey has challenged the constitutionality of PASPA, on the basis that PASPA "commandeers" or impermissibly controls the regulatory power of states relating to the legalization of sports betting, thereby violating the Tenth Amendment to the U.S. Constitution.[61] The respondents (the National Collegiate Athletic Association, the National Basketball Association, the National Football League, the National Hockey League, and the Office of the Commissioner of Baseball) defend PASPA's pre-emption of state laws that authorize sports gambling as a valid exercise of congressional power to regulate commerce.[62] The Court's decision in the case is anticipated no later than June 29, 2018.

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)[63] was signed into law by President George W. Bush on October 13, 2006.[64] Internet gambling is not determined to be legal in a state, nor illegal. Instead, UIGEA targets financial institutions in an attempt to prevent the flow of money from an individual to an internet gaming company. Congress found that enforcement of gambling laws through new mechanisms "are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders."[65] UIGEA expressly states that none of its provisions "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."[66]

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[58] *See* 28 U.S.C. s. 3704(a)(4) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Nov. 27, 2017).
[59] *See* 28 U.S.C. s. 3704(a)(1) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Nov. 27, 2017).
[60] *See* 28 U.S.C. s. 3704(a)(2) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Nov. 27, 2017).
[61] *See Christie v. National Collegiate Athletic Association,* Docket No. 16-476, (*Christie*) at http://www.scotusblog.com/case-files/cases/christie-v-national-collegiate-athletic-association-2/ (last visited Nov. 27, 2017). Oral argument in the case was held on December 4, 2017.
[62] *See* the respondents' Brief in Opposition at http://www.scotusblog.com/wp-content/uploads/2016/12/16-476-16-477-BIO.pdf at page 17 (last visited Nov. 27, 2017).
[63] *See* https://www.gpo.gov/fdsys/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIV-chap53.pdf, (UIGEA online) at page 46 (last visited Nov. 27, 2017).
[64] The provisions of UIGEA were adopted in Conference Committee as an amendment to H.R. 4954 by Representative Daniel E. Lungren (CA-3), "The SAFE Ports Act of 2006."
[65] *See* 31 U.S.C. s. 5361(a)(4), UIGEA online, at page 46.
[66] *See* 31 U.S.C. s. 5361(b).

"Unlawful internet gambling" prohibited by UIGEA includes the placement, receipt, or transmission of certain bets or wagers.[67] However, the definition of the term "bet or wager" specifically excludes any fantasy game or contest in which a fantasy team is not based on the current membership of a professional or amateur sports team, and:

- All prizes and awards are established and made known to the participants in advance of the game or contest;
- Prize amounts are not based on the number of participants or the amount of entry fees;
- Winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals or athletes in multiple "real-world sporting or other events;" and
- No winning outcome is based:
  - On the score, point-spread, or any performance or performances of any single "real-world" team or combination of teams; or
  - Solely on any single performance of an individual athlete in any single "real-world sporting or other event."[68]

While UIGEA excludes bets or wagers of participants in certain fantasy sports games and contests,[69] it does not, however, authorize fantasy contests and activities in Florida.

III. Effect of Proposed Changes:

CS/SB 374 creates s. 546.13, F.S. to authorize certain fantasy contests in which participants must pay an entry fee. Section 546.13(1), F.S., provides requirements for fantasy contests and associated definitions.

"Entry fee" means cash or a cash equivalent required to be paid by a person for the ability to participate in a fantasy contest offered by a fantasy contest operator.

"Fantasy contest operator" means a person or entity, including any employee or agent, that offers fantasy contests with an entry fee for a cash prize, but is not a participant in the fantasy contest. The term does not include an individual who serves as the commissioner of no more than 10 fantasy contests in a calendar year. The term "commissioner" is not defined in the bill, but has been used in the context of fantasy baseball leagues to denote a person who manages a fantasy baseball league, establishes league rules, resolves disputes over rule interpretations, and publishes league standings or selects the Internet service for publication of league standings.[70]

A "fantasy contest" is a fantasy or simulated game in which:

- The value of all prizes and awards offered to winning participants must be established and disclosed to the participants in advance of the contest;

[67] *See* 31 U.S.C. s. 5362(10), UIGEA online, at page 48.
[68] *See* 31 U.S.C. s. 5362(E)(ix), UIGEA online, at page 47.
[69] *Id*.
[70] *See* Bernhard & Eade, *Gambling in a Fantasy World: An Exploratory Study of Rotisserie Baseball Games*, 9 UNLV Gaming Research & Review Journal Issue 1, at 30, at http://digitalscholarship.unlv.edu/grrj/vol9/iss1/3/, (last visited Nov. 27, 2017).

- All winning outcomes reflect the relative knowledge and skill of contest participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events; and
- No winning outcome is based:
    - On the score, point spread, or any performance or performances of any single actual team or combination of teams;
    - Solely on any single performance of an individual athlete or player in any single actual event; or
    - On the performances of participants in collegiate, high schools, or youth sporting events.

The bill provides that the Department of Business and Professional Regulation may not regulate and the offenses in ss. 849.01, 849.08, 849.09, 849.11, 849.14, or 849.25, F.S., relating to gambling, lotteries, games of chance, contests of skill, or bookmaking do not apply to a fantasy contest operated or conducted by:

- A fantasy contest operator; or
- A natural person who is a participant in the fantasy contest, serves as the commissioner of not more than ten contests in a calendar year, and distributes all contest entry fees as prizes or awards to the participants in that fantasy contest.

The bill provides an effective date of October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 374 authorizes certain fantasy contests to be offered by fantasy contest operators, who will retain amounts participants pay as entry fees to participate in fantasy contests. Persons who pay entry fees to participate in fantasy contests have the opportunity to win prizes and awards.

C. Government Sector Impact:

CS/SB 374 could impact the Revenue Share Payments[71] required to be paid by the Seminole Tribe of Florida under the 2010 Gaming Compact. If fantasy contests permitted under the bill constitute gaming, are considered Class III gaming under federal law, and constitute, under the 2010 Gaming Compact, *new* Class III gaming in Florida, the payments due to the State under the 2010 Gaming Compact could end when fantasy contests begin to be offered for public or private use.[72]

In a letter to Senator Travis Hutson and Representative Mike La Rosa dated December 5, 2017,[73] Jim Shore, General Counsel for the Seminole Tribe, indicated:

> The Tribe believes the games permitted by these bills [HB 223 and SB 374 (Fantasy Contests), and SB 840 (Gaming)] would violate the Tribe's exclusivity, as set forth in Part XII of the 2010 Gaming Compact between the State and Tribe. By providing this notice, the Tribe hopes to avoid a situation where the State enacts legislation that inadvertently violates the Tribe's exclusivity. That said, the Tribe and the State have discussed the issue of fantasy sports contests in previous compact negotiations and the Tribe remains willing to do so now. However, federal law requires that any reduction in the Tribe's exclusivity must be balanced by some additional consideration from the State. Without such an agreement, the 2010 Gaming Compact would allow the Tribe to cease all revenue sharing payments to the State based on the expanded gaming contemplated by these bills.

The Revenue Estimating Conference (REC) estimates that the revenue that will be received from the Seminole Tribe associated with the 2010 Gaming Compact during Fiscal Year 2017-2018 will be $276 million, of which $272 million will accrue to the General Revenue Fund and $3.5 million will be distributed to local governments as required by s. 285.710(10), F.S. During Fiscal Year 2018-2019, the REC estimates revenue associated with the 2010 Gaming Compact will be $288.6 million, of which $280.1 million will accrue to the General Revenue Fund and $8.6 million will be distributed to local governments. The REC estimates the revenue associated with the 2010 Gaming Compact will increase to $307 million for Fiscal Year 2025-2026.[74]

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[71] Revenue Share Payments are the periodic payments to the State by the Seminole Tribe, based on the Tribe's Net Win. Net Win is defined as total receipts from the play of authorized tribal gaming in Florida, less all prizes, free play, or promotional credits. *See* paragraphs U and X of Part III of the 2010 Gaming Compact at page 11 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Nov. 27, 2017).

[72] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Nov. 27, 2017); the Revenue Share Payments and the required annual donation of $750,000 to the Florida Council on Compulsive Gaming must resume when the new Class III gaming is no longer operated.

[73] *See* Letter from Jim Shore, General Counsel for the Seminole Tribe, to Senator Travis Hutson and Representative La Rosa (Dec. 5, 2017) (on file with the Senate Committee on Regulated Industries).

[74] *See* the estimates for multiple fiscal years in the *Conference Results, Indian Gaming Revenues* at http://www.edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf (last visited Nov. 27, 2017).

The REC currently classifies all future Revenue Share Payments to be paid by the Seminole Tribe to the State as nonrecurring revenue because the terms of the Settlement Agreement and Stipulation entered on July 5, 2017, by the Seminole Tribe and the Department of Business and Professional Regulation on behalf of the State,[75] required the parties to take certain actions "that cannot be anticipated with sufficient certainty."[76]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 546.13 of the Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries on December 7, 2017:
The committee substitute:

- Revises the definition of "fantasy contest" to provide that a winning outcome may not be based on the performances of participants in collegiate, high school, or youth sporting events.
- Revises the definition of "fantasy contest operator" to:
  - Include the employees or agents of the individuals or entities that offer or conduct fantasy contests; and
  - Require that a fantasy contest operator not participate in the fantasy contest.
- Clarifies that the Department of Business and Professional Regulation may not regulate and the gambling laws do not apply to a fantasy contest conducted by:
  - A fantasy contest operator; or
  - A natural person who participates in the fantasy contest, serves as a commissioner of 10 or fewer contests in a calendar year, and distributes to the contest participants all of the entry fees as prizes.

[75] *See* Settlement Agreement and Stipulation (2017 Settlement) (July 5, 2017) (on file with the Senate Committee on Regulated Industries).
[76] *See Revenue Estimating Conference, Indian Gaming Revenues, Executive Summary* at http://www.edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf (last visited Nov. 27, 2017).

B. Amendments:

None.