

**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.)

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Prepared By: The Professional Staff of the Committee on Committee Code Not Found

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BILL: SB 7076

INTRODUCER: Regulated Industries Committee

SUBJECT: Gaming Enforcement

DATE: April 14, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>AP</u>	<b>RI Submitted as Comm. Bill/Fav</b>
	<u>Davis</u>	<u>Sadberry</u>		<b>Pre-Meeting</b>

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## I. Summary:

SB 7076 establishes additional enforcement measures to address violations of gambling laws and the conduct of unauthorized gaming in the state, including the creation of the Florida Gaming Control Commission, and granting additional investigatory and prosecutorial authority to the Office of Statewide Prosecution in the Department of Legal Affairs.

SB 7078, relating to Public Records and Public Meeting Exemptions/Florida Gaming Control Commission, is linked to this bill.

The bill will have an indeterminate fiscal impact on state government. See Section V, Fiscal Impact Statement.

Except as otherwise expressly provided in the bill, the bill takes effect July 1, 2021.

## II. Present Situation:

### Background

In general, gambling is illegal in Florida.<sup>1</sup> Chapter 849, F.S., prohibits keeping a gambling house,<sup>2</sup> running a lottery,<sup>3</sup> or the manufacture, sale, lease, play, or possession of slot machines.<sup>4</sup> However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel<sup>5</sup> wagering at licensed greyhound and horse tracks and jai alai frontons;<sup>6</sup>

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<sup>1</sup> See s. 849.08, F.S.

<sup>2</sup> See s. 849.01, F.S.

<sup>3</sup> See s. 849.09, F.S.

<sup>4</sup> Section 849.16, F.S.

<sup>5</sup> “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.

<sup>6</sup> See ch. 550, F.S., relating to the regulation of pari-mutuel activities.

- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;<sup>7</sup> and
- Cardrooms<sup>8</sup> at certain pari-mutuel facilities.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup> A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds of the lottery are deposited to the Educational Enhancement Trust Fund (EETF) and appropriated by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.<sup>12</sup>

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,<sup>13</sup> bingo,<sup>14</sup> charitable drawings,<sup>15</sup> game promotions (sweepstakes),<sup>16</sup> and bowling tournaments.<sup>17</sup> The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.<sup>18</sup>

### **Regulation of Pari-mutuel Wagering**

The Division of Pari-mutuel Wagering (division) in the Department of Business and Professional Regulation (DBPR) regulates pari-mutuel wagering. The division has regulatory oversight of permitted and licensed pari-mutuel wagering facilities, cardrooms located at pari-mutuel facilities, and slot machines at pari-mutuel facilities located in Miami-Dade and Broward counties. According to the division, there were eight license suspensions, and \$19,075 in fines

<sup>7</sup> See FLA. CONST., art. X, s. 23, and ch. 551, F.S.

<sup>8</sup> Section 849.086, F.S. See s. 849.086(2)(c), F.S., which 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.”

<sup>9</sup> The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2021-2022 Operating Licenses to operate 27 cardrooms. See <http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/> (last visited Apr. 7, 2021).

<sup>10</sup> 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).

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> See s. 849.085, F.S.

<sup>14</sup> See s. 849.0931, F.S.

<sup>15</sup> See s. 849.0935, F.S.

<sup>16</sup> See s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

<sup>17</sup> See s. 849.141, F.S.

<sup>18</sup> See s. 546.10, F.S.

assessed for violations of all pari-mutuel statutes and administrative rules in Fiscal Year 2019-2020.<sup>19</sup>

Ten permitholders were not issued operating licenses for Fiscal Year 2020-2021: two greyhound permitholders,<sup>20</sup> two jai alai permitholders,<sup>21</sup> one limited thoroughbred permitholder,<sup>22</sup> and five quarter horse permitholders.<sup>23</sup>

### **Issuance of Pari-mutuel Permits and Annual Licenses**

Section 550.054, F.S., provides that any person meeting the qualification requirements of ch. 550, F.S., may apply to the division for a permit to conduct pari-mutuel wagering. Upon approval, a permit must be issued to the applicant that indicates:

- The name of the permitholder;
- The location of the pari-mutuel facility;
- The type of pari-mutuel activity to be conducted; and
- A statement showing qualifications of the applicant to conduct pari-mutuel performances under ch. 550, F.S.

A permit does not authorize any pari-mutuel performances until approved by a majority of voters in a ratification election in the county in which the applicant proposes to conduct pari-mutuel wagering activities. An application may not be considered, nor may a permit be issued by the division or be voted upon in any county, for the conduct of:

- Harness horse racing, quarter horse racing, thoroughbred horse racing, or greyhound racing at a location within 100 miles of an existing pari-mutuel facility; or
- Jai alai games within 50 miles of an existing pari-mutuel facility.

Distances are measured on a straight line from the nearest property line of one pari-mutuel facility to the nearest property line of the other facility.<sup>24</sup>

After issuance of the permit and a ratification election, the division may issue an annual operating license for wagering at the specified location in a county, indicating the time, place, and number of days during which pari-mutuel operations may be conducted at the specified location.<sup>25</sup>

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<sup>19</sup> See the 89th Annual Report for Fiscal Year 2019-2020 issued by the division at: [AnnualReport-2019-2020--89th--20210224.pdf](#) at page 5 (equivalent to page 3 of the printed Annual Report) (last visited Apr. 13, 2021).

<sup>20</sup> Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).

<sup>21</sup> Gadsden Jai-alai (Chattahoochee) and Tampa Jai Alai.

<sup>22</sup> Under s. 550.3345, F.S., during Fiscal Year 2010-2011 only, holders of quarter horse racing permits were allowed to convert their permits to a thoroughbred racing permit, conditioned upon specific use of racing revenues for enhancement of thoroughbred purses and awards, promotion of the thoroughbred horse industry, and the care of retired thoroughbred horses. Two conversions occurred, Gulfstream Park Thoroughbred After Racing Program (GPTARP) (Hallandale, Broward County), which was licensed to operate in 2019-2020, and Ocala Thoroughbred Racing (Marion County), which was not licensed to operate.

<sup>23</sup> ELH Jefferson (Jefferson County), DeBary Real Estate Holdings (Volusia County), North Florida Racing (Jacksonville), Pompano Park Racing (Pompano Beach), and St. Johns Racing (St. Johns County). See [http://www.myfloridalicense.com/dbpr/pmw/documents/PermitholdersList\\_2020-2021.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/PermitholdersList_2020-2021.pdf) (last visited Apr. 13, 2021).

<sup>24</sup> See s. 550.054(2), F.S.

<sup>25</sup> See s. 550.054(9)(a), F.S.

Pursuant to s. 550.054(9)(b), F.S., the division may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of ch. 550, F.S., or any administrative rule adopted by the division, and may impose a civil penalty against the permitholder or license up to \$1,000 for each offense.

### **Slot Machine Gaming Locations and Operations**

Section 32 of Art. X of the State Constitution, adopted pursuant to a 2004 initiative petition, authorized slot machines in licensed pari-mutuel facilities in Broward and Miami-Dade, if approved by county referendum. The voters in Broward and Miami-Dade counties approved slot machine gaming. Slot machine gaming in the state is limited to Broward and Miami-Dade counties, and as authorized by federal law, in the tribal gaming facilities of the Seminole Tribe.

Sections 551.104(3), 551.116, and 551.121, F.S., address slot machine gaming operations, and:

- Restrict the issuance of slot machine licenses to licensed pari-mutuel permitholders, for slot machine gaming only at the facility where pari-mutuel wagering is authorized to be conducted by the permitholder;
- Limit slot machine gaming to 18 hours per day, Monday through Friday, and 24 hours on Saturdays and Sundays; and
- Prohibit the service of complimentary or reduced-cost alcoholic beverages to persons playing a slot machine, among other prohibitions.

### **Cardrooms**

Section 849.086, F.S., authorizes cardrooms at certain pari-mutuel facilities.<sup>26</sup> In Fiscal Year 2021-2022, 27 cardrooms are licensed to operate.<sup>27</sup> A license to offer pari-mutuel wagering, slot machine gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.<sup>28</sup> A cardroom may be open 18 hours per day on Monday through Friday, and 24 hours per day on Saturday and Sunday.<sup>29</sup>

Sections 849.086(5) and (6), F.S., provide that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit may hold a cardroom license authorizing the operation of a cardroom and the conduct of authorized games at the cardroom. An authorized game is a game or series of games of poker or dominoes.<sup>30</sup> Such games must be played in a non-banking manner,<sup>31</sup> where the participants play against each other, instead of against the house (cardroom). At least four percent of the gross cardroom receipts of greyhound racing permitholders and jai alai

<sup>26</sup> Section 849.086, F.S. Section 849.086(2)(c), F.S., defines “cardroom” to mean a facility where authorized 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.

<sup>27</sup> See <http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/> (last visited Apr. 13, 2021).

<sup>28</sup> *Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), review denied, 412 So.2d 470, 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). 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.”

<sup>29</sup> Section 849.086(7)(b), F.S.

<sup>30</sup> See s. 849.086(2)(a), F.S.

<sup>31</sup> *Id.*

permitholders conducting live races or games must supplement greyhound purses, and quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.<sup>32</sup>

### **Gaming Compacts with Seminole Tribe of Florida**

In 2010, a gaming compact (2010 Compact) between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida (state) was ratified by the Legislature.<sup>33</sup> The 2010 Compact authorizes the Seminole Tribe to conduct certain Class III gaming for a 20-year period, and to offer banked card games for five years, through July 31, 2015. The 2010 Compact provides that any expanded gaming (beyond what is specifically acknowledged) allowed in the state relieves the Seminole Tribe of its obligations to make substantial revenue sharing payments.

Pursuant to s. 285.710(13), 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 Compact. The 2010 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.

Section 285.710(9), F.S., provides that money received by the state from a gaming compact is to be deposited into the General Revenue Fund and provides for the distribution of three percent of the amount paid by the Seminole Tribe to the specified local governments. The percentage of the local share distributed to the specified counties and municipalities is based on the net win per facility in each county and municipality.

The Seminole Tribe notified the state in May 2019, that it was discontinuing revenue share payments in accordance with the 2010 Compact, based on the results of federal litigation. The 2010 Compact remains in effect through July 31, 2030.

As designated in s. 285.710, F.S., the division of the DBPR carries out the state's oversight responsibilities under the 2010 Compact.

### **Class III Gaming under the Indian Gaming Regulatory Act**

Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA).<sup>34</sup> The 2010 Compact authorizes the Seminole Tribe to conduct specified Class III gaming activities at its seven tribal facilities in Florida.<sup>35</sup>

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<sup>32</sup> See s. 849.086(13)(d), F.S.

<sup>33</sup> Ch. 2010-29, Laws of Fla.

<sup>34</sup> 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.*

<sup>35</sup> See paragraph F of Part III of the 2010 Compact. The Seminole 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 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 Apr. 13, 2021).

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.<sup>36</sup>

### **Amendment 3 to the State Constitution (Voter Control of Gambling)**

During the 2018 General Election, the electorate approved an initiative constitutional amendment (Amendment 3, Voter Control of Gambling in Florida). The amendment is codified in the State Constitution as article X, section 30).<sup>37</sup>

Amendment 3 requires a vote proposed by citizen's initiative to amend the State Constitution pursuant to Article XI, section 3 to authorize "casino gambling" in Florida. Casino gambling is defined in section (b) of Amendment 3 as:

- Any of the "types of games typically found in casinos" and that are:
  - Within the definition of Class III gaming in the Federal Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq; and
  - In 25 [Code of Federal Regulations] (C.F.R.) § 502.4 upon the adoption of the amendment and any that are added to such definition of Class III gaming in the future.

Section (b) of Amendment 3 provides that casino gambling includes, but is not limited to, the following:

- Any house banking game, including but not limited to, card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);
- Any player-banked game that simulates a house banking game, such as California blackjack;
- Casino games such as roulette, craps, and keno;
- Any slot machines as defined in 15 U.S.C. 1171(a)(1); and
- Any other game not authorized by Article X, section 15 [of the State Constitution, relating to state operated lotteries], whether or not defined as a slot machine, in which outcomes are determined by random number generator or are similarly assigned randomly, such as instant or historical racing.

Section (b) of Amendment 3 also further defines "casino gambling" as including the following devices:

- Any electronic gambling devices;
- Simulated gambling devices;

<sup>36</sup> See 25 U.S.C. s. 2703.

<sup>37</sup> See the text of Amendment 3, now codified as art. X, s. 30, at

<http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes&CFID=44933245&CFTOKEN=f39b1ca7cab71561-BE329BC7-5056-B837-1A6123F335C4849F#A10S30> (last visited Apr. 13, 2021).

- Video lottery devices;
- Internet sweepstakes devices; and
- Any other form of electronic or electromechanical facsimiles of any game of chance, slot machine, or casino-style game, regardless of how such devices are defined under [the Indian Gaming Regulatory Act].

Under Amendment 3, the term casino “casino gambling” does not include:

...pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions. For the purposes of [Amendment 3], “gambling” and “gaming” are synonymous.

Additionally, Amendment 3 provides:

Nothing in [Amendment 3] shall be deemed to limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gaming or gambling activities. In addition, nothing in [Amendment 3] shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to [the Indian Gaming Regulatory Act].

By its terms, Amendment 3 became effective on November 6, 2018, is self-executing, and no legislative implementation is required. If any part of Amendment 3 is held invalid for any reason, the remaining portion(s) must be severed from the invalid portion and given “the fullest possible force and effect.”

### **United States Gaming Regulatory Agencies (Gaming Commissions)**

The National Council of Legislators from Gaming States (NCLGS) is an organization of state lawmakers which meets to discuss gaming issues, and includes committees on lotteries, pari-mutuels, casinos, responsible gaming, Indian gaming issues, and telephone/internet wagering.<sup>38</sup>

Regulatory resources cited by NCLGS include the:

- Association of Racing Commissioners International, Inc. (ARCI), a non-profit corporation founded in the 1930’s to uphold uniform pari-mutuel racing rules and practice, serves as a resource for pari-mutuel rulings, including equine medication issues. The ARCI works to preserve the integrity of horseracing, jai-alai, and dog-racing.<sup>39</sup>
- North American Gaming Regulators Association (NAGRA), created in 1984, includes as members federal, state, local, tribal, and provincial government gaming regulators.<sup>40</sup>

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<sup>38</sup> See <https://www.nclgs.org/index.php/about-us> (last visited Apr. 13, 2021).

<sup>39</sup> See <http://arci.com/> (last visited Apr. 13, 2021).

<sup>40</sup> See <https://www.nagra.org/default.aspx> (last visited Apr. 13, 2021).

- National Indian Gaming Commission (NIGC), established under the Indian Gaming Regulatory Act, is an independent federal regulatory agency charged with the regulation of Indian gaming on Indian land, specifically to protect tribes from corrupt influences, including organized crime, to make sure it is tribes that are receiving the benefit of Indian gaming, and to ensure that fair playing practices that protect tribes and players are adhered to. The NIGC maintains a list of gaming tribes on its site, searchable by tribe or state.<sup>41</sup>
- International Association of Gaming Regulators (IAGR), which is an organization of international government agencies responsible for the regulation of gaming in their home jurisdictions concerned with sharing information and resources among each other on issues relevant to the regulation of gaming.<sup>42</sup>

According to NAGRA, there are approximately 75 gaming regulatory agencies in the United States and Canada, including lottery commissions, pari-mutuel commissions, racing commissions, casino control commissions, and gambling control commissions.<sup>43</sup> Two of the most well-known gaming control entities are the Nevada Gaming Commission and Gaming Control Board,<sup>44</sup> and the New Jersey Casino Control Commission.<sup>45</sup>

In Nevada, members of the Board and Commission are appointed by the Governor of Nevada to four-year terms. In addition to other requirements, each member must be a resident of Nevada and no member may hold elective office while serving. Members are also not permitted to possess any direct pecuniary interest in gaming activities while serving in their capacity as members.<sup>46</sup>

The New Jersey Casino Control Commission (NJ commission) is the independent licensing authority of the state's casinos<sup>47</sup> and key employees<sup>48</sup>, comprised of up to three members, appointed by the governor and confirmed by the state senate.<sup>49</sup> As a quasi-judicial panel, the NJ commission conducts hearings<sup>50</sup> on contested casino key employee license matters, and appeals<sup>51</sup> from decisions and penalties imposed by the state's division of gaming enforcement. Commissioners serve staggered, five-year terms and may only be removed for cause.<sup>52</sup> The commission notes:

The success and ongoing viability of the gaming industry remains inextricably linked to the public's confidence that the State of New Jersey will ensure that people in the industry possess good character, honesty and

<sup>41</sup> See <https://www.nigc.gov/> (last visited Apr. 13, 2021).

<sup>42</sup> See <https://www.iagr.org/> (last visited Apr. 13, 2021).

<sup>43</sup> See links to the numerous state and province gaming regulatory agencies, commissions, control boards, and lotteries at <https://www.nagra.org/State-and-Province-Gaming-Regulatory-Agencies> (last visited Apr. 13, 2021).

<sup>44</sup> See <https://gaming.nv.gov/> (last visited Apr. 13, 2021).

<sup>45</sup> See <https://www.nj.gov/casinos/> (last visited Apr. 13, 2021).

<sup>46</sup> See the Board Information Packet at p. 3, available at <https://gaming.nv.gov/modules/showdocument.aspx?documentid=14995> (last visited Apr. 13, 2021).

<sup>47</sup> See <https://www.nj.gov/casinos/services/info/index.html> (last visited Apr. 13, 2021).

<sup>48</sup> See <https://www.nj.gov/casinos/services/licensing/index.html> (last visited Apr. 13, 2021).

<sup>49</sup> See <https://www.nj.gov/casinos/about/overview/> (last visited Apr. 13, 2021).

<sup>50</sup> See <https://www.nj.gov/casinos/services/hearings/index.html> (last visited Apr. 13, 2021).

<sup>51</sup> *Id.*

<sup>52</sup> See <https://www.nj.gov/casinos/about/overview/> (last visited Apr. 13, 2021).



integrity. Stewardship over that public confidence is a principal responsibility of the Commission and its Chairman.

The NJ commission's regulatory efforts through the years have helped create an environment in which New Jersey's casinos can prosper and from which the citizens of New Jersey benefit. With proper regulatory controls, the industry serves as a catalyst to create economic benefits for Atlantic City, the Greater Atlantic City Region, and the entire State of New Jersey.<sup>53</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 16.56(1)(a), F.S., relating to the Office of Statewide Prosecution in the Department of Legal Affairs (office), to authorize the office to investigate and prosecute, in addition to gambling offenses, any violation of ch. 24, F.S., (State Lotteries), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), including violations referred by the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation (DBPR), the Department of the Lottery, the Gaming Control Commission, the Seminole Tribe of Florida, or any person licensed under those chapters.

**Section 2** creates s. 16.71, F.S., to establish a Gaming Control Commission (commission), to be administratively housed in the Department Legal Affairs, Office of the Attorney General. The commission is a separate budget entity and serves as the agency head for all purposes. The commission is not subject to control, supervision, or direction by the Department of Legal Affairs or the Attorney General in the performance of its duties, including but not limited to personnel, purchasing transactions involving real or personal property, and budget matters.

#### Commissioners

The commission consists of five members, one from each appellate district, to be appointed by the Governor by January 1, 2022, subject to Senate confirmation. Of the five members, at least one member must be experienced in law enforcement and criminal investigation, at least one member must be a certified public accountant licensed in this state and experienced in accounting and auditing, and at least one member must be an attorney admitted and authorized to practice law in this state. After initial appointments to create staggered terms, all members will serve four year terms, but may not serve more than 12 years. The salary of a member is the same as a commissioner serving on the Public Service Commission (approximately \$136,000 annually).

The commission must appoint an executive director, no later than July 1, 2022, to supervise, direct, coordinate, and administer the activities needed to fulfill the commission's responsibilities. The executive director serves at the pleasure of the commission, may not be a commissioner, and must reside in and maintain the commission's headquarters in Leon County. Similarly, the executive director's salary is the same as a commissioner serving on the Public Service Commission (approximately \$136,000 annually).

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<sup>53</sup> *Id.*

## Commission Employees

All commission employees, except the executive director and attorneys, are subject to part II of ch. 110, F.S., relating to the Career Service System, which provides uniform personnel rules, guidelines, records, and reports related to employees and positions in career service developed by the Department of Management Services in consultation with affected agencies.

The commission's executive director is subject to part III of ch. 110, F.S., relating to the Senior Management Service System. Section 110.401, F.S., provides:

This part [III] creates a uniform system for attracting, retaining, and developing highly competent senior-level managers at the highest executive-management-level agency positions in order for the highly complex programs and agencies of state government to function effectively, efficiently, and productively. The Legislature recognizes that senior-level management is an established profession and that the public interest is best served by developing and refining the management skills of its Senior Management Service employees. Accordingly, training and management-development programs are regarded as a major administrative function within agencies.

Attorneys employed by the commission are subject to part V of ch. 110, F.S., relating to the Selected Exempt Service System. Section 110.601, F.S., provides:

This part [V] creates a system of personnel management the purpose of which is to deliver high-quality performance by those employees in select exempt classifications by facilitating the state's ability to attract and retain qualified personnel in these positions, while also providing sufficient management flexibility to ensure that the workforce is responsive to agency needs. The Legislature recognizes that the public interest is best served by developing and refining the technical and managerial skills of its Selected Exempt Service employees, and, to this end, technical training and management development programs are regarded as a major administrative function within agencies.

For a period of two years immediately preceding appointment to, or employment with, the commission, and while appointed or employed with the commission, a person may not:

- Hold a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), a license issued under ch. 551, F.S., (Slot Machines), ch. 546, F.S., (Amusement Facilities) or ch. 849, F.S., (Gambling); be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), F.S.,<sup>54</sup> of such permitholder or licensee;

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<sup>54</sup> Section 550.002, F.S., defines the term "ultimate equitable owner" to mean "a natural person who, directly or indirectly, owns or controls five percent or more of an ownership interest in a corporation, foreign corporation, or alien business organization, regardless of whether such person owns or controls such ownership through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof."

- Be an officer, official, employee, or other person with duties or responsibilities relating to a gaming operation owned by an Indian tribe that has a valid and active compact with the state; be a contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or be an ultimate equitable owner, as defined in s. 550.002(37), F.S., of such entity; or
- Be a registered lobbyist for the executive or legislative branch, except when solely representing the commission.

Persons who fail to meet or violate the above requirements are ineligible for appointment to or employment with the commission, or if, within the two years immediately preceding such appointment or employment, he or she has solicited or accepted employment with; acquired any direct or indirect interest in; has any direct or indirect business association, partnership, or financial relationship with; or is a relative of, any person or entity who is an applicant, licensee, or registrant with the commission or the Division of Pari-mutuel Wagering (division) in the DBPR.

The term “relative” means a spouse, father, mother, son, daughter, grandfather, grandmother, brother, sister, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

All employees authorized by the commission must have access to and the right to inspect premises licensed by the division, to collect and remit taxes, and to examine the books and records of all licensees and permitholders. The authorized employees must require strict compliance by each licensee and permitholder with Florida law relating to such licenses and permits.

Each employee serving as a law enforcement officer for the commission must meet the qualifications for employment or appointment as a law enforcement officer under s. 943.13, F.S., and be certified as a law enforcement officer by the Department of Law Enforcement under ch. 943, F.S. Upon certification, each law enforcement officer has statewide jurisdiction and is subject to and has the same authority provided in ch. 901, F.S., for law enforcement officers generally. Each officer also has arrest authority pursuant to s. 901.15, F.S., and possesses the full law enforcement powers granted to other peace officers of this state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

The responsibilities of each officer are:

- Primarily, to investigate, enforce, and prosecute, throughout the state, violations and violators of ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling), and the rules adopted thereunder, as well as other state laws that the division officers or all state law enforcement officers are specifically authorized to enforce; and
- Secondly, to enforce all other state laws, provided that the enforcement is incidental to exercising the officer’s primary responsibilities described above.

The bill provides an officer may exercise the powers of a deputy sheriff only after consultation or coordination with the appropriate local sheriff's office or municipal police department, or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

### **Commission's Powers and Duties**

The commission must meet at the call of the chair, or at the request of a majority (three members constitute a quorum) of its members, and:

- Exercise all state regulatory and executive powers respecting gambling, including, without limitation, pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts executed by the state pursuant to the Federal Indian Gaming Regulatory Act, and any other forms of gambling authorized by the state constitution or law, but not lottery games operated by the state.
- Establish procedures consistent with ch. 120, F.S., (Administrative Procedure Act) to ensure adequate due process in exercising its regulatory and executive functions.
- Ensure that Florida law is not interpreted in any manner that expands the activities authorized in ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling).
- Review any matter within the scope of the jurisdiction of the division.
- Review the regulation of licensees, permitholders, or persons regulated by the division and the procedures used by the division to implement and enforce the law.
- Review the procedures of the division used to qualify applicants for a license, permit, or registration.
- Refer criminal violations of ch. 24, F.S., (State Lotteries), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling) to the appropriate state attorney or to the Office of Statewide Prosecution, as applicable.
- Exercise all other powers and perform any other duties prescribed by the Legislature.

The bill authorizes the commission to subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the commission's duties or powers. The commission may meet in any city or county of the state.

The commission chair may schedule hearings to determine whether enforcement of the gaming laws of this state is sufficient to protect residents from an abuse or misinterpretation of law that may expand gaming or gambling in this state. The chair may direct that a hearing be held before one member or a panel of less than the full commission, and must adopt rules to provide for the filing of a report for hearings held by a single commissioner or a panel and prescribe the requirements for the content and filing of such reports.

The commission may submit written recommendations to enhance the enforcement of Florida gaming laws to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and is authorized to contract or consult with other state agencies as may be needed to discharge its duties.

The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing must conform to state law. The commission must develop annual budget requests pursuant to ch. 216, F.S., relating to Planning and Budgeting; while a budget is not subject to change by the Department of Legal Affairs or the Attorney General, it must be submitted by the Department of Legal Affairs to the Governor for transmittal to the Legislature.

All rules adopted pursuant to ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling), prior to the effective date of the act are preserved and remain in full force and effect.

The commission must exercise all of the regulatory and executive powers granted to it, and apply, construe, and interpret all laws and administrative rules, in a manner consistent with the gaming compact ratified, approved, and described in s. 285.710(3), F.S.

**Section 3** creates s. 16.715, F.S., to provide standards of conduct and prohibit ex parte communications (i.e., communications from only one party to a proceeding). Commissioners are public officers subject to the Code of Ethics for Public Officers and Employees set forth in part III of ch. 112, F.S., (Code of Ethics), but they are also governed by standards of conduct and provisions limiting ex parte communications, as provided in the bill, similar to the standards applicable to commissioners serving on the Public Service Commission. Many of the prohibitions involve activities with persons regulated by the commission (regulated entity).

### **Standards of Conduct**

Under the bill, a commissioner:

- May not accept anything from any business entity which, either directly or indirectly, owns or controls any regulated entity, or from any business entity which, either directly or indirectly, is an affiliate or subsidiary of any regulated entity.
- May attend conferences and associated meals and events that are generally available to all conference participants without payment of fees in addition to the conference fee.
- May attend meetings, meals, or events while attending a conference, that are not sponsored, in whole or in part, by any representative of any regulated entity and that are limited to commissioners only, committee members, or speakers, if the commissioner is a member of a committee of the association of regulatory agencies that organized the conference or is a speaker at the conference;
- May attend a conference for which conference participants who are employed by a regulated entity have paid a higher conference registration fee than the commissioner, or to attend a meal or event that is generally available to all conference participants without payment of any fees in addition to the conference fee, and that is sponsored, in whole or in part, by a regulated entity.
  - If during the course of an investigation by the Commission on Ethics into an alleged violation, a person is alleged to have given or provided a prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense; and

- If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the gaming control commission or otherwise represent anyone before that commission for a period of two years.
- May not accept any form of employment with or engage in any business activity with:
  - Any business entity which, either directly or indirectly, owns or controls any regulated entity:
  - Any regulated entity; or
  - Any business entity which, either directly or indirectly, is an affiliate or subsidiary of any regulated entity.
- May not have any financial interest, other than shares in a mutual fund, in:
  - Any regulated entity;
  - Any business entity which, either directly or indirectly, owns or controls any regulated entity; or
  - Any business entity which, either directly or indirectly, is an affiliate or subsidiary of any regulated entity.
- Must immediately, if the commissioner acquires any prohibited financial interest during his or her term of office as a result of events or actions beyond the commissioner's control:
  - Sell such financial interest; or
  - Place such financial interest in a blind trust at a financial institution; and may not attempt to influence, or exercise any control over, decisions regarding the blind trust.
- May not accept anything from a party in a proceeding currently pending before the commission.
  - If, during the course of an investigation by the Commission on Ethics into an alleged violation, a person is alleged to have given or provided a prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense.
  - If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the gaming control commission or otherwise represent anyone before that commission for a period of two years.
- May not serve as the representative of any political party or on any executive committee or other governing body of a political party; serve as an executive officer or employee of any political party, committee, organization, or association; receive remuneration for activities on behalf of any candidate for public office; engage on behalf of any candidate for public office in the solicitation of votes or other activities on behalf of such candidacy; or become a candidate for election to any public office without first resigning from office.
- May not make any public comment, during his or her term of office, regarding the merits of any proceeding under ss. 120.569 and 120.57, F.S., relating to decisions affecting substantial interests and hearings involving disputed issues of material fact, currently pending before the commission.
- May not conduct himself or herself in an unprofessional manner at any time during the performance of his or her official duties.
- Must avoid impropriety in all of his or her activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.
- May not directly or indirectly, through staff or other means, solicit anything of value from:
  - Any regulated entity;

- Any business entity that, whether directly or indirectly, is an affiliate or subsidiary of any regulated entity; or
- Any party appearing in a proceeding considered by the commission in the last two years.
- Must annually complete at least four hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state; this requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

The above standards of conduct may be more restrictive than the Code of Ethics, but may not be construed to contravene that code's restrictions. In the event of a conflict, the more restrictive provision applies.

The Commission on Ethics must accept and investigate any alleged violations of the above standards of conduct pursuant to the procedures contained in the Code of Ethics as described in ss. 112.322 through 112.3241, F.S. The Commission on Ethics must provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to the Code of Ethics.

A commissioner may request an advisory opinion from the Commission on Ethics, pursuant to s. 112.322(3)(a), F.S., regarding the standards of conduct or the prohibitions set forth in ss. 16.71 and 16.715, F.S., created by the bill.

### **Ex Parte Communications**

Under the bill, a commissioner may not initiate or consider ex parte communications (i.e., communications from only one party to a proceeding) concerning the merits, threat, or offer of reward in any proceeding that is currently pending before the commission, or that the commissioner knows or reasonably expects will be filed with the commission within 180 days after the communication. An individual may not discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 180 days. These prohibitions do not apply to commission staff.

If a commissioner knowingly receives a prohibited ex parte communication relative to a proceeding to which he or she is assigned, the commissioner must place on the record of the proceeding copies of:

- All written communications received;
- All written responses to the communications; and
- A memorandum stating the substance of all oral communications received and all oral responses made.

The commissioner must give written notice to all parties to the ex parte communication that such matters have been placed on the record. Any party who desires to respond to an ex parte communication may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record. The commissioner may, if he or she deems it necessary to eliminate the effect of an ex parte

communication, withdraw from the proceeding, in which case the chair must substitute another commissioner for the proceeding.

Any individual who makes an ex parte communication must submit to the commission a written statement describing the nature of such communication, to include:

- The name of the person making the communication;
- The name of the commissioner or commissioners receiving the communication;
- Copies of all written communications made and all written responses to such communications; and
- A memorandum stating the substance of all oral communications received and all oral responses made.

The commission must place on the record of a proceeding all such communications. Any commissioner who knowingly fails to place on the record any such communications within 15 days of the date of such communication, is subject to removal and may be assessed a civil penalty not to exceed \$5,000.

The Commission on Ethics must receive and investigate sworn complaints of violations of the standards of conduct or prohibitions against ex parte communications, pursuant to the procedures contained in the Code of Ethics as described in ss. 112.322 through 112.3241, F.S.

If the Commission on Ethics finds that there has been a violation of the standards of conduct or prohibitions against ex parte communications by a commissioner, it must provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to the Code of Ethics, and to remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated the standards is subsection. The Governor must remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated the standards of conduct or prohibitions against ex parte communications, after a previous finding by the Commission on Ethics that the commissioner willfully and knowingly violated the standards of conduct or the prohibitions against ex parte communications in a separate matter.

If a commissioner fails or refuses to pay the Commission on Ethics any civil penalties for such violations, the Commission on Ethics may bring an action in any circuit court to enforce such penalty.

If, during the course of an investigation by the Commission on Ethics into an alleged violation of the standards of conduct or prohibitions against ex parte communications, allegations are made as to the identity of the person who participated in the ex parte communication, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense. If the Commission on Ethics determines that the person participated in the ex parte communication, the person may not appear before the commission or otherwise represent anyone before that commission for a period of two years.



**Section 4** amends s. 285.710, F.S., effective July 1, 2022, to provide that the commission is the state compliance agency designated as the state agency with authority to carry out the state's oversight responsibilities under the 2010 Compact with the Seminole Tribe, rather than the division.

**Section 5** provides for a Type Two transfer pursuant to s. 20.06(2), F.S., effective July 1, 2022, of all powers and duties, personnel, administrative rules, and funding of the DBPR, relating to the regulation of pari-mutuel wagering, slot machines, and cardrooms, and the state compliance agency's oversight responsibilities for authorized gaming compacts. The Department of Legal Affairs will provide administrative support to the commission until the transfer is complete, but the commission is not subject to control, supervision, or direction by the Department of Legal Affairs, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters. Those employees transferred from the DBPR to the commission retain and transfer accrued leave balances.

**Section 6** directs the Division of Law Revision to prepare a reviser's bill to conform the Florida Statutes to the Type Two transfer described in Section 5.

**Section 7** provides that except as otherwise expressly provided in the bill, the bill takes effect July 1, 2021.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill establishes the Florida Gaming Control Commission (commission) within the Department of Legal Affairs, Office of the Attorney General. Estimated costs total \$1 million in Fiscal Year 2021-2022, for the commission to begin operations and prepare for the Type Two transfer to take effect on July 1, 2022. The Department of Legal Affairs will submit a Legislative Budget Request for specific needs of the commission for Fiscal Year 2022-2023.

The Pari-Mutuel Wagering Trust Fund (trust fund) will transfer as part of the Type Two transfer. Projected revenues of the trust fund are sufficient to support the cost of the commission.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 16.56 and 285.710.

This bill creates the following sections of the Florida Statutes: 16.71 and 16.715.

The bill creates undesignated sections of the Florida law.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.