

**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 Appropriations

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BILL: SB 2A

INTRODUCER: Senator Hutson

SUBJECT: Implementation of the 2021 Gaming Compact

DATE: May 14, 2021

REVISED: 5/17/21

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1	<u>Kraemer/Imhof</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

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**I. Summary:**

SB 2A ratifies the 2021 Gaming Compact executed by the Seminole Tribe of Florida (Seminole Tribe) and by Governor DeSantis on behalf of the State of Florida (state) on April 23, 2021 (the 2021 Gaming Compact).

The bill takes effect only if the Gaming Compact between the Seminole Tribe of Florida and the State of Florida executed by the Governor and the Seminole Tribe of Florida on April 23, 2021, under the Indian Gaming Regulatory Act of 1988, is approved or deemed approved and not voided by the United States Department of the Interior, and shall take effect on the date that notice of the effective date of the compact is published in the Federal Register.

*See Section V, Fiscal Impact Statement.*

The 2021 Gaming Compact:

- Provides the Seminole Tribe with partial, but significant additional substantial exclusivity for specified gaming activities in Florida, as detailed below;
- Requires the payment of revenue share payments by the Seminole Tribe based on varying percentage rates under specified conditions;
- Includes a guaranteed minimum compact term payment of \$2.5 billion for the first five years (not less than \$400,000 annually, which is assumed to be August 1 to July 31, dependent upon approval date by the Secretary); and
- Has a term ending July 31, 2051.

**AUTHORIZED GAMING**

The 2021 Gaming Compact:

- Continues to authorize the Seminole Tribe to conduct banking card games, including baccarat, chemin de fer, and blackjack (21), at its gaming facilities; the play of poker games in a designated player manner, if compliant with certain restrictions (discussed in Exceptions

to Exclusive Rights – Continued Poker at Licensed Cardrooms below), is not a violation of exclusivity.

- Permits the Seminole Tribe to offer table games, such as craps and roulette, at its gaming facilities.
- Authorizes sports betting on professional and collegiate sport events by players physically located in the State who may use a mobile or other electronic device, exclusively by and through sports books conducted and operated by the Seminole Tribe, which must contract with any willing, qualified pari-mutuel permitholder to perform marketing and similar services in support of the sports books, for compensation of not less than 60% of the profit associated with wagering by the permitholder's registered patrons through the permitholder's branded website or mobile application. Such wagering is to be deemed to be exclusively conducted by the Seminole Tribe where the servers or other devices used to conduct such wagering activity on the Seminole Tribe's Indian lands are located.
- Authorizes Fantasy Sports Contests; wagers on fantasy sports contests, including wagers made by players physically located within the State using a mobile or other electronic device, which wagering is to be deemed to be exclusively conducted by the Seminole Tribe where the servers or other devices used to conduct such wagering activity on the Seminole Tribe's Indian lands are located.
- Continues to authorize the Seminole Tribe to conduct slot machine gaming at its gaming facilities.
- Allows the Seminole Tribe to add up to three additional facilities within its Hollywood Reservation.
- Specifies that the Seminole Tribe may employ a management contractor or licensee, as permitted by the Indian Gaming Regulatory Act (IGRA) and Code of Federal Regulations (C.F.R.), but the Seminole Tribe remains solely responsible for the operation of slot machine gaming, craps, roulette, banking card games, fantasy sports contests, and sports betting (Covered Games or Covered Gaming Activity).
- Provides that the State and the Seminole Tribe agree to engage in good faith negotiations within 36 months after the Effective Date of the 2021 Gaming Compact to consider an amendment to the 2021 Gaming Compact to authorize the Seminole Tribe to offer all types of Covered Games online or via mobile devices to players physically located in the state, where such wagers made using a mobile device or online shall be deemed to take place exclusively where received at the location of the servers or other devices used to conduct such wagering activity at a tribal gaming facility. Any dispute as to whether a party has engaged in good faith negotiations is not subject to suit nor a waiver of the state's sovereign immunity from suit.

## **GAMING COMPLIANCE STANDARDS AND REQUIREMENTS**

The 2021 Gaming Compact:

- Specifies the operation of Covered Gaming Activity on tribal facilities must comply with the:
  - Federal Wire Act (18 United States Code § 1084).
  - Seminole Tribal Gaming Code approved by the National Indian Gaming Commission (NIGC).
  - Rules and Regulations promulgated by the Seminole Tribal Gaming Commission, the tribal governmental agency with authority to carry out the Seminole Tribe's regulatory and oversight responsibilities under the gaming compact.

- National Indian Gaming Commission's Guidance for Class III Minimum Internal Control Standards.
- Requires the Seminole Tribe to:
  - Pay an annual oversight assessment of up to \$600,000 to be used for the operation of the State Compliance Agency; if any additional tribal gaming facilities are added as authorized under the 2021 Compact, the assessment increases by \$150,000 annually, per additional facility.
  - Make an annual donation to the Florida Council on Compulsive Gaming as an assignee of the state of \$250,000 per operational gaming facility.
  - Have compliance audits prepared for slot machine operations and sports betting operations.
  - Limit the play of Covered Games to persons who must be 21 years of age or older, unless otherwise permitted by state law.
  - Prevent illegal activity at its gaming facilities.
  - Prevent illegal activity associated with its web applications and websites employed for sports betting.
  - Ensure prompt notice is given to law enforcement authorities about persons who may be involved in illegal acts.
  - Ensure that its gaming facilities comply with Florida Building Code standards.

### **EXCEPTIONS TO EXCLUSIVE RIGHTS GRANTED TO THE SEMINOLE TRIBE**

The 2021 Gaming Compact provides exceptions to the Seminole Tribe's exclusive rights, including:

- Continued slot machine gaming at the eight pari-mutuel permitholder locations in Broward and Miami-Dade counties, with certain actions requiring written consent of the Seminole Tribe relating to proximity to tribal gaming facilities; slot machines may not offer games using tangible playing cards, but may offer games using electronic or virtual cards.
- Continued operation of electronic bingo card minders and historic racing machines at pari-mutuel facilities located outside of counties with slots facilities (not more than 350 total per facility).
- Continued operation of pari-mutuel wagering activities at licensed facilities.
- Continued poker at licensed cardrooms, including poker games played in a designated player manner, in which one player is permitted, but not required, to cover other players' wagers, for games that were approved by the Department of Business and Professional Regulation before April 1, 2021, and a limitation on the number of tables depending on whether slot machine gaming is authorized in the county where the cardroom is located.
- No cardroom operator may have any direct economic interest in a designated player game except for the rake; and
- No card room operator may receive any portion of the designated player's winnings.
- Continued operation of lottery games and the use of lottery vending machines by the Florida Lottery, including certain technologic enhancements for lottery games, and the use of a device or the Internet to scan play slips and communicate winning numbers for draw lottery games.
- Operation of amusement games authorized by ch. 546, F.S.

- Operation of bingo games and instant bingo, as authorized by s. 849.089, F.S. (at licensed pari-mutuel facilities, to include the use of electronic bingo card minders outside of Broward and Miami-Dade counties), and as authorized by s. 849.0931, F.S. (by charitable organizations, to include the use hand-held and table-top card minders).
- Operation of fantasy sports contests.
- Provision of marketing services by a qualified pari-mutuel permitholder pursuant to a written agreement with the Seminole Tribe associated with the Seminole Tribe's operation of sports betting.

The 2021 Gaming Compact provides there is no exclusivity violation related to the authorization of fantasy sports contests in the state.

## 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>
- 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 licensed 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

<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.

<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) issued licenses to permitholders with 2020-2021 Operating Licenses to operate 27 cardrooms. See <http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/> (last visited May 11, 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 State Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.

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>

### **Gaming Compacts with the 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.<sup>19</sup> The 2010 Gaming Compact authorizes the Seminole Tribe to conduct certain Class III gaming (see section below on Class III Gaming under the Indian Gaming Regulatory Act) for a 20-year period ending July 31, 2030.

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 Gaming Compact. 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.

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 specified local governments. As designated in s. 285.710, F.S., the Division of Pari-mutuel Wagering of the DBPR carries out the state's oversight responsibilities under the 2010 Gaming Compact.

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<sup>12</sup> The Department of the Lottery is authorized by s. 15, Art. X of the State 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.

<sup>19</sup> Ch. 2010-29, Laws of Fla.

### **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>20</sup> The 2010 Gaming Compact authorizes the Seminole Tribe to conduct specified Class III gaming activities at its seven tribal facilities in Florida.<sup>21</sup>

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>22</sup>

### **The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)**

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)<sup>23</sup> was signed into law by President George W. Bush on October 13, 2006.<sup>24</sup> Under this act, 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.”<sup>25</sup> 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.”<sup>26</sup>

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<sup>20</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>21</sup> See paragraph F of Part III of the 2010 Gaming 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 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 May 11, 2021).

<sup>22</sup> See 25 U.S.C. s. 2703.

<sup>23</sup> 31 U.S.C. ss. 5361-5366.

<sup>24</sup> 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.”

<sup>25</sup> 31 U.S.C. s. 5361(a)(4).

<sup>26</sup> 31 U.S.C. s. 5361(b).

“Unlawful internet gambling” prohibited by UIGEA includes the placement, receipt, or transmission of certain bets or wagers.<sup>27</sup> 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 and their value is not determined by the number of participants or the amount of fees by the participants;
- 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.”<sup>28</sup>

While UIGEA excludes bets or wagers of participants in certain fantasy sports games and contests,<sup>29</sup> it does not, however, authorize fantasy sports contests and activities in Florida.

### **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),<sup>30</sup> which provided 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.<sup>31</sup>

Under PASPA, governmental entities were also prohibited from licensing such activities (generally known as sports betting) or authorizing them by law or compact.<sup>32</sup> However, PASPA did not apply to pari-mutuel animal racing or jai alai games,<sup>33</sup> or to a lottery, sweepstakes, or other betting, gambling, or wagering conducted by a governmental entity between January 1, 1976, and August 31, 1990.<sup>34</sup>

The prohibition against sports betting also did not apply to a lottery, sweepstakes, or other betting, gambling, or wagering lawfully conducted, where such activity was authorized by law

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<sup>27</sup> 31 U.S.C. s. 5362(10).

<sup>28</sup> See 31 U.S.C. s. 5362(1)(E)(ix).

<sup>29</sup> *Id.*

<sup>30</sup> 28 U.S.C. ss. 3701-3704.

<sup>31</sup> 28 U.S.C. s. 3702.

<sup>32</sup> *Id.*

<sup>33</sup> 28 U.S.C. s. 3704(a)(4).

<sup>34</sup> 28 U.S.C. s. 3704(a)(1).

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.<sup>35</sup>

PASPA did not make sports gambling a federal crime, but rather provided a process for bringing civil actions to enforce PASPA against the states. When PASPA was passed by Congress, four states, including Nevada,<sup>36</sup> were “grandfathered” and allowed to continue existing forms of sports gambling. PASPA effectively prohibited all other states, including Florida, from legalizing sports gambling within their boundaries.

In *Murphy v. NCAA (Murphy)*,<sup>37</sup> the State of New Jersey 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.<sup>38</sup> The case arose soon after New Jersey enacted legislation in 2014 to legalize sports gambling in that state, in apparent violation of PASPA. In defense of its legislation, New Jersey asserted that PASPA was unconstitutional. As a result, the case was closely watched throughout the country due to the potential for a broad ruling affecting the authority of all states to legalize sports gambling. 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) defended PASPA’s pre-emption of state laws authorizing sports gambling as a valid exercise of congressional power to regulate commerce.<sup>39</sup>

On May 14, 2018, the United States Supreme Court held that PASPA is unconstitutional and invalid.<sup>40</sup> The ruling struck down the entire statute, which, absent future Congressional action to the contrary, appears to allow states to enact legislation to authorize sports betting in their jurisdictions.

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

During the 2018 General Election, the electorate approved a constitutional amendment (Amendment 3, Voter Control of Gambling in Florida). The amendment is codified as Section 30 of Article X of the State Constitution.<sup>41</sup>

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<sup>35</sup> See 28 U.S.C. s. 3704(a)(2).

<sup>36</sup> The states allowed to continue their existing forms of sports gambling are Nevada, Montana, Delaware, and Oregon.

<sup>37</sup> *Murphy v. NCAA (Murphy)*, 138 S.Ct. 1461 (2018). The original style of the case was *Christie v. National Collegiate Athletic Association*, Case No. 16-476 which was consolidated with *New Jersey Thoroughbred Horsemen’s Assoc. v. National Collegiate Athletic Association*, Case No. 16-477. The style was changed to *Murphy v. National Collegiate Athletic Association* upon the election of Philip D. Murphy as Governor of the State of New Jersey. See [https://www.supremecourt.gov/DocketPDF/16/16-476/28553/20180119165048861\\_16-476%20Letter%20to%20SCT%20re%20name%20change.pdf](https://www.supremecourt.gov/DocketPDF/16/16-476/28553/20180119165048861_16-476%20Letter%20to%20SCT%20re%20name%20change.pdf) (last visited May 11, 2021).

<sup>38</sup> *Id.*

<sup>39</sup> See the respondents’ Brief in Opposition at <http://www.scotusblog.com/wp-content/uploads/2016/12/16-476-16-477-BIO.pdf> at 17 (last visited May 11, 2021).

<sup>40</sup> See *Murphy*, *supra* note 36.

<sup>41</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 May 11, 2021).



Amendment 3 requires a vote proposed by a citizen initiative to amend the State Constitution pursuant to Section 3 of Article XI of the State Constitution 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.) s. 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” to include the following:

- Any electronic gambling devices;
- Simulated gambling devices;
- 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 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.”

### ***Gaming Compacts***

The 2010 Gaming Compact between the state and the Seminole Tribe, and any future gaming compact between those parties, are not impacted by Amendment 3. Amendment 3 expressly exempts such compacts and provides that the amendment does not limit the ability of the state and Native American tribes to:

- Negotiate gaming compacts for the conduct of casino gambling on tribal lands; or
- Affect any existing gambling on tribal lands pursuant to existing compacts.<sup>42</sup>

### ***Fantasy Sports Contests***

Fantasy sports contests are not typically found in a casino and are not Class III games, and therefore, are likely not impacted by Amendment 3.

### ***Pari-mutuel Wagering***

Amendment 3 does not affect pari-mutuel wagering; the amendment specifically exempts pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions from the definition of “casino gambling.” However, Amendment 3 may prevent any expansion of casino gambling or Class III or casino-style gaming (such as slot machine gaming) at additional pari-mutuel facilities.

### ***Lottery***

The operation of the state lottery is not affected by Amendment 3; the amendment provides that the definition of “casino gambling” includes “any other game not authorized by Article X, section 15, . . .” Therefore, the constitutional authorization for a state lottery in Article X, section 15 is not impacted by Amendment 3.

### ***Legislative Regulatory Authority***

Amendment 3 does not affect the Legislature’s regulatory authority over casino gambling. The amendment provides that nothing in the amendment “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.”

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<sup>42</sup> The state has negotiated and ratified only one gaming compact, the 2010 Gaming Compact, with the Seminole Tribe. The Miccosukee Tribe of Indians of Florida operates a Class II gaming facility in Florida. The Poarch Band of Creek Indians has a one acre tract of land held in trust by the United States Department of the Interior north of Pensacola, Florida.

### ***Sports Betting***

Sports betting, i.e., wagering on sporting events, is not expressly addressed in Amendment 3, which provides in section (b) that “casino gambling” means 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 (IGRA), 25 U.S.C. 2701 *et seq.*;<sup>43</sup> and
- In 25 C.F.R. § 502.4<sup>44</sup> upon the adoption of [Amendment 3] and any that are added to such definition of Class III gaming in the future.

As of January 17, 2018, when the Florida Secretary of State assigned the ballot number for Amendment 3, sports betting was authorized only at Nevada casinos, and sports lotteries were operating in Montana, Delaware, and Oregon.

However, at that time, under the Professional and Amateur Sports Protection Act (PASPA),<sup>45</sup> it was unlawful for a state to “sponsor, operate, advertise, promote, license, or authorize by law” wagering on sports. When PASPA was passed by Congress, the four states noted above were “grandfathered” and allowed to continue existing forms of wagering on sports. PASPA effectively prohibited all other states, including Florida, from legalizing sports gambling within their boundaries.

Sports betting was illegal outside of Nevada, however, leading to the continuation of sports betting through sports books and off-shore operators and a constitutional challenge by New Jersey (discussed in the PASPA section above).<sup>46</sup> Over the past 20 years, estimates and studies of the annual amount of illegal sports betting have ranged from \$80 billion to \$380 billion, and the American Gaming Association has estimated annual illegal sports betting in the United States to be about \$150 billion.<sup>47</sup>

Wagering on sporting events does not constitute the playing of a “game,” is not a “device” as described in Amendment 3, and is not typically found in a casino. Therefore, Amendment 3 may be interpreted to mean that sports betting, neither a game nor a device, and not typically found in a casino, does not fall within and is not impacted by, the language in the amendment. However, under 25 C.F.R. s. 502, sports betting is included in Class III.

### **Application of the Federal Wire Act to Sports Betting**

In 2011, in a Memorandum Opinion for the Assistant Attorney General, Criminal Division, the Office of Legal Counsel in the United States Department of Justice addressed whether it was lawful for the States of Illinois and New York to use the Internet and out-of-state transaction processors to sell lottery tickets to in-state adults. The question was whether the federal Wire Act, 18 U.S.C. s. 1084, prohibited the states from conducting in-state lottery transactions over the Internet if the transmissions cross state lines, limiting the use of out-of-state transactions

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<sup>43</sup> See 25 U.S.C. s. 2701 *et seq.*

<sup>44</sup> See 25 C.F.R. s. 502.4.

<sup>45</sup> 28 U.S.C. ss. 3701-3704.

<sup>46</sup> See also, *Murphy*, *supra* note 36, and the accompanying text.

<sup>47</sup> *Id.*

processors. The opinion concluded that interstate transmissions of wire communications over the Internet that do not relate to a “sporting event or contest”<sup>48</sup> fall outside of the reach of the Wire Act. The opinion noted that because the lottery proposals did not involve wagering on sporting events or contests, the Wire Act did not prohibit them.<sup>49</sup>

On November 2, 2018, the United States Department of Justice (DOJ) reinterpreted its 2011 opinion concluding that the prohibitions of the federal Wire Act<sup>50</sup> are limited to sports gambling, concluding instead that the statutory prohibitions are not uniformly limited to gambling on sporting events or contests.<sup>51</sup> The DOJ determined that only one clause in the Wire Act, which criminalizes transmitting “information assisting in the placing of bets or wagers on any sporting event or contest,” is limited to gambling on sports events, and the other prohibitions apply to non-sports-related betting or wagering that satisfy other required elements of the Wire Act. Therefore, according to the DOJ, application of the Wire Act is no longer limited just to sports gambling.

As a result, various states that relied on the 2011 decision to sell lottery tickets via the Internet challenged the DOJ’s 2018 reinterpretation. The state of New Hampshire filed suit in federal court in early 2019 seeking relief under the federal declaratory judgment and administrative procedure acts. The federal trial court granted the relief requested, ruling that the Wire Act is limited to sports gambling.<sup>52</sup> The case was appealed by the DOJ, and the federal appellate court recently held that the Wire Act’s prohibitions are limited to bets or wagers on sporting events or contests.<sup>53</sup>

### **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 counties, if approved by county referendum. The voters in Broward and Miami-Dade counties approved slot machine gaming. Slot machine gaming in the state, by authorized slot machine gaming licensees at specified pari-mutuel facility locations, is limited to Broward and Miami-Dade counties, and as authorized by federal law and the 2010 Gaming Compact, in the tribal gaming facilities of the Seminole Tribe located in Broward County, Collier County, Glades County, Hendry County, and Hillsborough County.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 285.710, F.S., to ratify and approve the gaming compact executed on April 23, 2021, by Governor DeSantis and the Seminole Tribe, which will supersede the 2010 Gaming Compact when the 2021 Gaming Compact becomes effective. In the event the 2021 Gaming Compact is not approved by the Legislature and the United States Secretary of the

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<sup>48</sup> 18 U.S.C. s. 1084(a).

<sup>49</sup> <https://www.justice.gov/olc/file/2011-09-20-wire-act-non-sports-gambling/download> (last visited May 11, 2021).

<sup>50</sup> 18 U.S.C. § 1084(a).

<sup>51</sup> See <https://www.justice.gov/olc/file/1121531/download> (last visited May 11, 2021).

<sup>52</sup> *New Hampshire Lottery Commission v. Barr*, 386 F.Supp. 3d 132 (D. N.H. 2019), which was appealed to the United States Court of Appeals for the First Circuit.

<sup>53</sup> See *New Hampshire Lottery Commission v. Rosen*, 986 F.3d 38 (1st Cir. 2021) at p. 5, available at <http://media.ca1.uscourts.gov/pdf/opinions/19-1835P-01A.pdf> (last visited May 11, 2021).

Interior, or is invalidated by court action or change in federal law, the 2010 Gaming Compact remains in effect, and the Seminole Tribe may continue to conduct the gaming activities authorized under the 2010 Gaming Compact.

The 2021 Gaming Compact will become effective after approval by the Secretary of the United States Department of the Interior (Secretary), as required by the Indian Gaming Regulatory Act of 1988 (IGRA) or when notice of approval by the Department of the Interior is published in the Federal Register.<sup>54</sup>

The 2021 Gaming Compact authorizes the Seminole Tribe to conduct the following additional games at its tribal gaming facilities:

- Craps, including dice games such as sic-bo and similar variations.
- Roulette, including big six and similar variations.
- Fantasy Sports Contests; wagers on fantasy sports contests conducted by the Seminole Tribe, including wagers made by players physically located within the state using a mobile or other electronic device, shall be deemed to be exclusively conducted by the Seminole Tribe where the servers or other devices used to conduct such wagering activity on the Seminole Tribe's Indian lands are located.
- Sports Betting; wagers on sports betting on professional and collegiate sport events, including wagers made by players physically located within the state using a mobile or other electronic device, shall be deemed to be exclusively conducted by the Seminole Tribe where the servers or other devices used to conduct such wagering activity on the Seminole Tribe's Indian lands are located. Such sports betting, operated exclusively by and through one or more sports books conducted and operated by the Seminole Tribe at tribal facilities, must include contracts for marketing or similar services for the Seminole Tribe's sports book(s), related to, for and including such wagering undertaken through the use of electronic devices that will utilize the digital sports book(s) provided by the Seminole Tribe, and that use a brand of any willing, qualified pari-mutuel permitholder. See section on qualified pari-mutuel permitholders and obligations of the Seminole Tribe below.
- Authorizes the Seminole Tribe to continue to conduct at its tribal gaming facilities:
  - Banking or banked card games, including baccarat, chemin de fer, blackjack (21), and card games banked by the house, by a bank established by the house, or by a player.
  - Slot machines.
  - Raffles and drawings.
- Requires the Seminole Tribe to pay the State significant amounts of revenue share in exchange for the exclusivity provided in the 2021 Gaming Compact with respect to the operation of the types of gaming that the Seminole Tribe is authorized to conduct, including increases to the existing revenue share brackets under the 2010 Gaming Compact.
- Provides exceptions to the exclusivity provided to the Seminole Tribe for the following:
  - Any Class III Gaming or other casino-style gaming authorized by a compact with a federally recognized tribe pursuant to the Indian Gaming Regulatory Act (IGRA).
  - Continued operation of slot machine gaming, which does not include any game played with tangible playing cards, by the eight currently operating licensed pari-mutuel permitholders in Broward and Miami-Dade counties, subject to consent from the Seminole Tribe for any slot machine license transfers in proximity to tribal gaming

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<sup>54</sup> 25 U.S.C. s. 2710(d)(8).

- facilities, and provided the number of slot machines at any location does not exceed 2,000 machines (which will trigger a reduction in the amount of revenue share payments to the state).
- Operation at each pari-mutuel facility licensed as of January 1, 2021, of a combined total of 350 Historic Racing Machines and Electronic Bingo Card Minders, as defined in the 2021 Gaming Compact.
  - Continued operation of pari-mutuel wagering activities at licensed pari-mutuel facilities.
  - Continued operation of cardrooms offering poker and dominos at pari-mutuel facilities with licensed cardrooms pursuant to Florida law, and poker games played in a designated player manner, where one player is permitted but not required to cover other players' wagers, with certain restrictions. (See **Section 5** below).
  - Operation of Class III Gaming or Other Casino Style Gaming (excluding sports betting or remote/online gaming) at locations more than 100 miles from a tribal gaming facility.
  - Continued operation of lottery games and the use of lottery vending machines by the Florida Department of the Lottery, including certain technologic enhancements for lottery games, and the use of a device or the Internet to scan play slips and communicate winning numbers for draw lottery games.
  - Operation of Fantasy Sports Contests.
  - Operation of bingo games and instant bingo authorized by ch. 849, F.S. (at licensed pari-mutuel facilities).
  - Operation of amusement games authorized by ch. 546, F.S., as of January 1, 2021.
  - Provision of marketing services by a qualified pari-mutuel permitholder pursuant to a written agreement with the Seminole Tribe associated with the Seminole Tribe's operation of sports betting.
  - Expanded gaming conducted pursuant to a constitutional amendment approved pursuant to Section 3 of Article XI of the State Constitution (i.e., citizen initiative) that is funded in whole or in part by the Seminole Tribe.
  - Terminates on July 31, 2051.
  - Continues the provisions of the 2010 Gaming Compact to limit gaming at tribal facilities to persons who are 21 years of age or older.
  - Allows the Seminole Tribe to add three additional facilities on the parcel which is part of the Seminole Tribe's Hollywood Reservation and which is east of the present location of the Florida Turnpike.
  - Allows the Seminole Tribe to employ a management contractor or licensee, as permitted by the Indian Gaming Regulatory Act (IGRA) and the Code of Federal Regulations (C.F.R.), but the Seminole Tribe will remain solely responsible for the operation of authorized gaming (i.e., Covered Games).
  - Provides that the state and the Seminole Tribe agree to engage in good faith negotiations within 36 months after the effective date of the 2021 Gaming Compact to consider an amendment to the 2021 Gaming Compact to authorize the Seminole Tribe to offer all types of covered games online or via mobile devices to players physically located in the state, where such wagers made using a mobile device or online shall be deemed to take place exclusively where received at the location of the servers or other devices used to conduct such wagering activity at a tribal gaming facility, and further provides that any dispute as to whether a party has engaged in good faith negotiations shall not be subject to suit and is not a waiver of the state's sovereign immunity from suit.

- Requires all gaming activity at tribal facilities to comply with federal law, including the Wire Act; the Seminole Tribal Gaming Code approved by the National Indian Gaming Commission (NIGC); the Rules and Regulations promulgated by the Seminole Tribal Gaming Commission; the NIGC's Guidance for Class III Minimum Internal Control Standards.
- Increases the amount of the annual oversight assessment paid by the Seminole Tribe to \$600,000 annually from \$400,000 per year; and if the Seminole Tribe adds any of the additional gaming facilities authorized under the 2021 Gaming Compact, increases the assessment by \$150,000 annually, per additional facility.

### **Qualified Pari-mutuel Permitholders and Obligations of the Seminole Tribe**

The term "qualified pari-mutuel permitholders" in the 2021 Gaming Compact means a person or entity that held a pari-mutuel wagering permit and operating license prior to January 1, 2021, and holds a slot machine license or a cardroom license. All sports betting wagering is deemed at all times to be exclusively conducted by the Seminole Tribe at its tribal facilities where the sports books, including servers and devices to conduct the same, are located.

Sports betting wagering must be undertaken by a patron physically located in Florida and may be conducted by a patron using an electronic device connected via the Internet, web application or otherwise. Such wagering may be undertaken by any patron connected via the Internet, web application or otherwise of any qualified pari-mutuel permitholder, and regardless of the location in Florida at which a patron uses such device.

If the Tribe offers or is offering such wagering, the Seminole Tribe must have a written contract with any and all willing qualified pari-mutuel permitholders which expressly authorizes a qualified pari-mutuel permitholder to perform marketing or similar services for the Seminole Tribe's sports books, related to, for and including such wagering undertaken through the use of electronic devices that will utilize the digital sports book provided by the Seminole Tribe, and that use a brand of the qualified pari-mutuel permitholder. The duration of such contracts must be a minimum of five years, unless terminated by mutual agreement or by material breach.

Within three months of the effective date of the 2021 Gaming Compact, the Seminole Tribe must negotiate in good faith with any and all willing qualified pari-mutuel permitholders to enter into written contracts. If the Seminole Tribe does not have valid written contracts with at least three or more qualified pari-mutuel permitholders after commencement of the Seminole Tribe's sports betting operation, the revenue share payments due to the state for sports betting Net Win<sup>55</sup> received by the Seminole Tribe will increase by two percent until the Seminole Tribe has valid written contracts with at least three qualified pari-mutuel permitholders. After the Seminole Tribe has written contracts with three or more qualified pari-mutuel permitholders, the Seminole Tribe must make good faith offers upon request by other qualified pari-mutuel permitholders, upon similar terms.

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<sup>55</sup> The term "Net Win" is defined in the 2010 Gaming Compact and the 2021 Gaming Compact as "the total receipts from the play of all Covered Games less all prize payouts and free play or promotional credits issued by the Tribe." See 2021 Gaming Compact Part III, Section T.

The Seminole Tribe must consistently provide to qualified pari-mutuel permitholders in standardized formats, the digital interfaces to market the sports books digitally, including through the qualified pari-mutuel permitholder's development or procurement of customizable web or mobile assets for marketing services. The interfaces published by the Seminole Tribe must facilitate the dynamic and accurate publication of data to qualified pari-mutuel permitholders, and any changes within the sources of truth<sup>56</sup> contained within the Seminole Tribe's sports book(s) must be distributed in real-time to all qualified pari-mutuel permitholders.

The Seminole Tribe must compensate qualified pari-mutuel permitholders for marketing and similar services by payment of an amount not less than sixty percent of the difference between:

- The Net Win earned by the Seminole Tribe on all such wagering by patrons who access the Seminole Tribe's wagering platform via software that uses a brand of the qualified pari-mutuel permitholder; and
- A reasonable and proportionate share of all expenses incurred by the Seminole Tribe in operating and conducting such wagering through the marketing services of a qualified pari-mutuel permitholder, which must be specified in advance in the written contract between the Seminole Tribe and the qualified pari-mutuel permitholder and reported to the State Compliance Agency (SCA) after being incurred.

Notwithstanding the above, the Seminole Tribe is the exclusive operator of its sports books, and the Seminole Tribe's total payment for all marketing or similar services by qualified pari-mutuel permitholders may not exceed forty percent of the Seminole Tribe's total sports betting Net Win.

Such contracts must expressly state all such wagering is conducted exclusively at one or more of the Seminole Tribe's tribal gaming facilities, even if qualified pari-mutuel permitholders market the Seminole Tribe's sports book by providing dedicated areas within their facilities where patrons may access or use electronic devices to place wagers via the Internet, web applications, or otherwise to the Seminole Tribe's sports book;

The Seminole Tribe may suspend the participation of qualified pari-mutuel permitholder from providing services under the written contract upon a violation by the qualified pari-mutuel permitholder of the written contract or the Seminole Tribe's exclusivity under the 2021 Gaming Compact, provided the Seminole Tribe provides written notice to the qualified pari-mutuel permitholder, and the qualified pari-mutuel permitholder fails to completely halt such violation within thirty days after such notice.

The Seminole Tribe may not use player data obtained from a qualified pari-mutuel permitholder to market gaming offered by the Seminole Tribe under the 2021 Gaming Compact. With respect to wagers made with a mobile or other electronic device, the Seminole Tribe must implement:

- A registration process to validate player identity, including their age;
- An anti-money laundering (AML) process to verify the source of funds, track transactions, prevent anonymous deposits and submit official reports to the Financial Crimes Enforcement Network (FINCEN)<sup>57</sup> as required; and

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<sup>56</sup> Uses of sources of truth in the structuring of databases is intended to result in each data element being edited in a single place, to avoid duplication or omission. See [https://en.wikipedia.org/wiki/Single\\_source\\_of\\_truth](https://en.wikipedia.org/wiki/Single_source_of_truth) (last visited May 11, 2021).

<sup>57</sup> See the FINCEN website, available at <https://www.fincen.gov/> (last visited May 11, 2021).



- Geo-fencing to prevent wagers by players not physically located in Florida.

With respect to all forms of sports betting, the Seminole Tribe must comply with the rules and regulations adopted by the National Indian Gaming Commission,<sup>58</sup> including any requirements for video depictions of wagering outcomes. Any data source and the corresponding data to determine the results of all sports bets must be complete, accurate, reliable, timely and available, and appropriate to settle the types of events and wagers for which the data is used.

The State Compliance Agency (SCA) may utilize the dispute resolution provisions set forth in the 2021 Gaming Compact if it believes the Seminole Tribe has failed to comply with the requirements for sports betting, including the requirements relating to contracts with qualified pari-mutuel permitholders.

**Revenue Sharing under the 2021 Gaming Compact**

The 2021 Gaming Compact provides for revenue share payments to the state based on varying percentage rates that depend on the amount of the Seminole Tribe’s Net Win<sup>59</sup> (revenue share payments), the type of Covered Game, and other specified events, as set forth below:

<b>SUMMARY OF REVENUE SHARE PAYMENTS -2021 Gaming Compact</b> (Revenue Share Payments by the Seminole Tribe to the State)	
<b>Net Win - Slots, Raffles and Drawings; New Games, if Authorized by the State</b>	
\$0-2B:	12%;
\$2-2.5B:	17.5%
\$2.5-3B:	20%
\$3-3.5B:	22.5%
\$3.5B+:	25%
<b>Net Win - Slots, Raffles and Drawings; New Games, if Authorized by the State</b>	
\$0-1B:	15%;
\$1-1.5B:	17.5%
\$1.5-2B:	22.5%
\$2B+:	25%
<b>Net Win – Sports Betting</b>	
13.75%, on Net Win from marketing by Seminole Tribe	
10% on Net Win from marketing by qualified pari-mutuel permitholders	
<b>Guaranteed Minimum Compact Term Payment of \$2.5B</b> (Two billion, five hundred million dollars) (includes all Revenue Share Payments for the first five years of the 2021 Gaming	

<sup>58</sup> See the NIGC website, available at <https://www.nigc.gov/> (last visited May 11, 2021).

<sup>59</sup> *Supra* note 55.

Compact)
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### Guaranteed Minimum Compact Term Payments

If the 2021 Gaming Compact is ratified by the Legislature, submitted to the Secretary, and is approved in July, 2021, the revenue sharing cycle period will be from August 1 to July 31 each year.<sup>60</sup> The guaranteed minimum payments apply to the first five revenue sharing cycles, and the minimum amount guaranteed to be paid by the Seminole Tribe is at least:

- \$400 million for any revenue sharing cycle during the first five years;
- \$1.5 billion by the end of the third revenue sharing cycle; and
- \$2.5 billion by the end of the fifth revenue sharing cycle.<sup>61</sup>

### Reduction of Tribal Payments Due to Loss of Exclusivity Granted to the Seminole Tribe

- If, after January 1, 2021, the State Constitution is amended by the Legislature to authorize Class III Gaming or Other Casino-Style Gaming that was not in operation on that date, then the payments to the state will cease when the gaming begins to be played. The payments resume when such gaming stops.
- If, after January 1, 2021, there is an expansion of Class III Gaming or Other Casino-Style Gaming by a court decision or administrative ruling, the Seminole Tribe is required to make the payments into an escrow account, and the Legislature then has 15 months after the Seminole Tribe notifies the state of the gaming expansion, or if the state challenges the claim, the Legislature has 12 months after a favorable ruling for the Seminole Tribe to pass legislation to reverse the decision or ruling.
- If, after January 1, 2021, the State Constitution is amended by constitutional initiative without action by the Legislature to authorize:
  - Sports betting, then the Seminole Tribe's payments to the state are reduced by the Net Win from sports betting;
  - Class III Gaming or Other Casino Style Gaming, excluding sports betting or other form of online or remote gaming, at any location less than 100 miles from a tribal facility, then the Seminole Tribe's payments to the state are reduced by the Net Win (excluding sports betting) from any tribal facility within 100 miles of the new location. If the location is more than 100 miles from any tribal facility, then there is no breach of exclusivity.
- If, after January 1, 2021, sports betting is authorized for any other federally recognized tribe in Florida, then the Seminole Tribe's payments to the state are reduced by 25 percent of the Net Win from sports betting, but in no event may the revenue share payments be less than 10 percent of the Net Win from sports betting.

<sup>60</sup> See the review of the 2021 Gaming Compact by the Revenue Estimating Conference/Impact Conference at <http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2021a/pdf/Impact0506.pdf> (last visited May 11, 2021). The Office of Economic and Demographic Research (EDR) is a research arm of the Legislature principally concerned with forecasting economic and social trends that affect policy making, revenues, and appropriations. At the request of the legislative committees or other members of an estimating conference, EDR conducts impact assessments of proposed policy changes. Often, EDR's estimates are incorporated in the committee bill analysis or fiscal note. In some cases, committees will request EDR to take a particular proposal to a consensus estimating conference to obtain an impact estimate that is formally agreed to by both houses of the Legislature and by the Governor's Office. *Id.* at <http://edr.state.fl.us/Content/about/functions.cfm> (last visited May 11, 2021).

<sup>61</sup> *Id.*

- If state law is changed to authorize more than 2,000 slot machines at the four licensed pari-mutuel facilities in Miami-Dade County and the four licensed pari-mutuel facilities in Broward County, then the Seminole Tribe's payments to the state are reduced by 50 percent of the Net Win on slot machines from the Tribe's facilities in Broward County. Payments by the Seminole Tribe without such a reduction resume when the 2,000 slot machine limit is restored.
- Except for gaming authorized by constitutional initiative, if the state permits any other person or entity to offer any form of online or remote gaming, then the Seminole Tribe is permitted to accept wagers on the same, specific form of gaming from players physically located within the state using mobile or other electronic devices, with such wagers deemed to take place exclusively where received at the location of the servers or other devices used to conduct such wagering activity at a tribal facility on Indian Lands. If the state revokes its permission to such person or entity to offer any form of online or remote gaming, then the authorization for the Seminole Tribe to accept such wagers is also revoked.

**Section 2** amends s. 285.710, F.S., revises local government share distribution amounts that are made in Broward County and Collier County, related to governmental services provided in areas where tribal gaming facilities are located. The bill also provides the local government share derived from the three additional gaming facilities that the Seminole Tribe is authorized to add to its Hollywood Reservation pursuant to the 2021 Gaming Compact will be distributed to Broward County (25 percent), the City of Hollywood (35 percent), the Town of Davie (30 percent), and the City of Dania Beach (10 percent).

**Section 3** amends s. 285.712(4), F.S., to address submission of the 2021 Gaming Compact to the United States Secretary of the Interior, and to correct a cross reference.

**Sections 4 and 5** amend ss. 551.102 and 551.103, F.S., relating to slot machine gaming licenses and testing of slot machines for compliance with Florida law, respectively, to specify an "independent testing laboratory" is an independent laboratory with demonstrated competence testing gaming machines and equipment, and which is licensed by at least 10 other states and has not had its license suspended or revoked by any other state within the immediately preceding 10 years.

**Section 6** amends s. 849.086, F.S., relating to cardrooms, to:

- Require poker games played in a designated player manner in which one player is permitted, but not required, to cover other players' wagers, to comply with the following restrictions:
  - Poker games played in a designated player manner must have been identified in cardroom license applications approved by the division on or before March 15, 2018, or, if a substantially similar poker game, identified in cardroom license applications approved by the division on or before April 1, 2021;
  - If the cardroom is located in Broward County, Collier County, Glades County, Hendry County, Hillsborough County, or Miami-Dade County (i.e., where slot machine gaming is authorized in state and tribal facilities), the cardroom operator is limited to offering no more than 10 tables for the play of poker games in a designated player manner; and
  - If the cardroom is located outside Broward County, Collier County, Glades County, Hendry County, Hillsborough County, or Miami-Dade County (i.e., where slot machine

- gaming is not authorized), the cardroom operator is limited to offering no more than 30 tables for the play of poker games in a designated player manner;
- Provide there may not be more than nine players and a nonplayer dealer at each table;
  - Prohibit a cardroom operator from having any direct economic interest in a poker game played in a designated player manner, except for the rake; and
  - Prohibit a cardroom operator from receiving any portion of the winnings of a poker game played in a designated player manner.

Under the bill, no person licensed to operate a cardroom may operate any game that violates the exclusivity provided in the 2021 Gaming Compact.

**Section 7** provides the act takes effect only if the Gaming Compact between the Seminole Tribe of Florida and the State of Florida executed by the Governor and the Seminole Tribe of Florida on April 23, 2021, under the Indian Gaming Regulatory Act of 1988, is approved or deemed approved and not voided by the United States Department of the Interior, and shall take effect on the date that notice of the effective date of the compact is published in the Federal Register.

#### **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:**

Licensed pari-mutuel facilities, if eligible to be qualified pari-mutuel permit holders providing marketing and similar services to the Seminole Tribe, will receive revenue for such services.

**C. Government Sector Impact:**

The fiscal impact of the bill has not been reviewed by the Revenue Estimating Conference, but the revenue share payments due under the 2021 Gaming Compact, (if approved by the Legislature and the Secretary of the Interior as required), will have a positive fiscal impact to state government revenues.

According to the May 6<sup>th</sup> Impact Conference held by the Revenue Estimating Conference, the General Revenue Fund will benefit from the revenue share payments due under the 2021 Gaming Compact (if approved by the U.S. Secretary of the Interior or by operation of federal law). The first monthly revenue share payment is projected in September 2021 for August receipts, assuming federal approval is received in July 2021. The chart below shows the estimated revenue share payments to the state by year.

**Revenue Sharing Payments (in millions)**

	Yearly Revenue Sharing Cycle Aug - July	State Fiscal Year July - June (with guaranteed minimums)
Year 1 / FY 2021-22	426.7	355.6
Year 2 / FY 2022-23	455.5	450.7
Year 3 / FY 2023-24	475.3	472.0
Year 4 / FY 2024-25*	499.7	638.1
Year 5** / FY 2025-26	522.0	518.3

\* At the end of Year 3, cumulative payments must reach a minimum of \$1.5 billion. The REC estimates an additional payment in FY 2024-25 (end of Year 3 revenue sharing cycle) to reach the minimum.

\*\* At the end of Year 5 (affecting FY 2026-27), an additional payment is projected to reach the \$2.5 billion minimum revenue share requirement for the first five revenue sharing cycles.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 285.710, 285.712, 551.102, 551.103, and 849.086

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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