

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/SB 4-A

INTRODUCER: Appropriations Committee and Senator Hutson

SUBJECT: Gaming Enforcement

DATE: May 18, 2021

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

---

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Kraemer/Imhof</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 4-A 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 (commission), and granting additional investigatory and prosecutorial authority to the Office of Statewide Prosecution in the Department of Legal Affairs.

SB 6-A (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, and includes appropriations to implement this act and for administrative support by the Department of Business and Professional Regulation to the commission. *See* Section V, Fiscal Impact Statement.

Except as otherwise expressly provided in the bill, the bill takes effect on the same day that SB 2-A (Implementation of the 2021 Gaming Compact between the Seminole Tribe of Florida and the State of Florida) or similar legislation takes effect, if adopted in the same legislative session and becomes a law.

## 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 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>

<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) 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 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 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.

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 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.

<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> 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 May 11, 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 May 11, 2021).

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>

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 licensee of 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 counties, 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.

---

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

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

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

## Gaming Compacts with Seminole Tribe of Florida

In 2010, a gaming compact (2010 Gaming Compact) between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida (state) was ratified by the Legislature.<sup>33</sup> The 2010 Gaming 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 Gaming 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 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.

---

<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 May 11, 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.*

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

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

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 Gaming Compact, based on the results of federal litigation. The 2010 Gaming 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 Gaming 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 Gaming Compact authorizes the Seminole Tribe to conduct specified Class III gaming activities at its seven tribal facilities in Florida.<sup>35</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>36</sup>

### **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 in the State Constitution as article X, section 30).<sup>37</sup>

<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 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>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 May 11, 2021).

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.) 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" as including 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, the terms "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 practices, 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>
- 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

---

<sup>38</sup> See <https://www.nclgs.org/index.php/about-us> (last visited May 11, 2021).

<sup>39</sup> See <http://arci.com/> (last visited May 11, 2021).

<sup>40</sup> See <https://www.nagra.org/default.aspx> (last visited May 11, 2021).

<sup>41</sup> See <https://www.nigc.gov/> (last visited May 11, 2021).

<sup>42</sup> See <https://www.iagr.org/> (last visited May 11, 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 May 11, 2021).

<sup>44</sup> See <https://gaming.nv.gov/> (last visited May 11, 2021).

<sup>45</sup> See <https://www.nj.gov/casinos/> (last visited May 11, 2021).



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 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), part II of ch. 285, F.S., (Gaming Compact), 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), referred to the Office of Statewide Prosecution by the Florida Gaming Control Commission (commission).

**Section 2** creates s. 16.71, F.S., to establish the commission within the Department Legal Affairs, Office of the Attorney General. The commission is a separate budget entity, and the commissioners serve as the agency head. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing must conform to state law. 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.

---

<sup>46</sup> See the Board Information Packet Tab, at p. 3, available at <https://gaming.nv.gov/index.aspx?page=31> (last visited May 11, 2021).

<sup>47</sup> See <https://www.nj.gov/casinos/services/info/index.html> (last visited May 11, 2021).

<sup>48</sup> See <https://www.nj.gov/casinos/services/licensing/index.html> (last visited May 11, 2021).

<sup>49</sup> See <https://www.nj.gov/casinos/about/overview/> (last visited May 11, 2021).

<sup>50</sup> See <https://www.nj.gov/casinos/services/hearings/index.html> (last visited May 11, 2021).

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

<sup>52</sup> See <https://www.nj.gov/casinos/about/overview/> (last visited May 11, 2021).

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

The commission must convene at the call of its chair or at the request of a majority of the members of the commission. Meetings may be held via teleconference or other electronic means. Three members of the commission constitute a quorum, and the affirmative vote of the majority of a quorum is required for any action or recommendation by the commission. However, notwithstanding any other provision of law, the affirmative vote of three members is required to adopt a proposed rule, including an amendment to, or repeal of, an existing rule, that meets or exceeds any of the criteria in s. 120.54(3)(b)1., F.S., relating to special matters to be considered in rule adoption, and s. 120.541(2)(a), F.S., relating to the information required in a statement of estimated regulatory costs. The commission may meet in any city or county in Florida.

## **Commissioners**

### ***Appointment and Compensation***

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. The Governor must consider appointees who reflect Florida's racial, ethnic, and gender diversity. The Governor must appoint one of the members as the initial chair and one of the members as the initial vice chair; the chair and vice chair must serve a minimum of two years. Thereafter, the commission members elect one of the commissioners to serve as chair and one to serve as vice chair.

Of the five members, at least one member must have at least 10 years of experience in law enforcement and criminal investigations, at least one member must be a certified public accountant licensed in this state with at least 10 years of experience in accounting and auditing, and at least one member must be an attorney admitted and authorized to practice law in this state for the preceding 10 years. 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). Vacancies must be filled for the unexpired portion of a term.

### ***Removal or Suspension***

The Governor has the same power to remove or suspend commissioners as set forth in s. 7, Art. IV of the State Constitution. In addition to such power, the Governor may remove a member who is convicted of or found guilty of or has plead nolo contendere to, regardless of adjudication, in any jurisdiction, a misdemeanor that directly relates to gambling, dishonesty, theft, or fraud. Upon a commissioner's resignation or removal from office, the Governor must appoint a successor who meets the requirements for appointment set forth above, and who will serve the remainder of the unfinished term.

### ***Appointments; Requirements and Prohibitions***

A person may not be appointed to the commission until after a level 2 background screening pursuant to ch. 435, F.S., is performed, the results are forwarded to the Governor, and the Governor determines that the person meets all the requirements for appointment. However, a person who is ineligible for appointment under s. 16.713, F.S., (see **Section 5** below) may not be appointed by the Governor.

The Governor may not solicit or request any nominations, recommendations, or communications about potential candidates for appointment to the commission from:

- Any person that holds a permit or license issued under chs. 550, 551, or 849, F.S., an officer, official, or employee of such permitholder or licensee, or an ultimate equitable owner, as defined in s. 550.002(37), F.S., of such permitholder or licensee.
- Any officer, official, employee, contractor, or subcontractor of a tribe that has a valid and active compact with the state or an entity employed, licensed, or contracted by such tribe, or an ultimate equitable owner, as defined in s. 550.002(37), F.S., of such entity.
- Any registered lobbyist for the executive or legislative branch that represents any person or entity identified above.

The commission must appoint an executive director by April 1, 2022, to supervise, direct, coordinate, and administer the activities needed to fulfill the commission's responsibilities. The executive director may not be a commissioner and must reside in and maintain headquarters in Leon County. A person may not be appointed as executive director until after a level 2 background screening pursuant to ch. 435, F.S., is performed, the results are forwarded to the commission, and the commission determines that the person meets all the requirements for appointment as the executive director. The executive director must supervise, direct, coordinate, and administer all activities necessary to fulfill the commission's responsibilities.

Similarly, the executive director's salary is the same as a commissioner serving on the Public Service Commission (approximately \$136,000 annually). The executive director, with the consent of the commission, must employ such staff as are necessary to adequately perform the functions of the commission, within budgetary limitations.

The chair of the commission must appoint an inspector general to perform the duties of an inspector general under s. 20.055, F.S.

### **Division of Gaming Enforcement and Investigations**

**Section 3** creates s. 16.711, F.S., relating to the duties and creation of a Division of Gaming Enforcement (DGE) within the commission. Under the bill, the DGE is a criminal justice agency, as defined in s. 943.045, F.S. The commissioners must appoint a director of the DGE who is qualified by training and experience in law enforcement or security to supervise, direct, coordinate, and administer all activities of the division.

The DGE director and all investigators employed by the DGE must meet the requirements for employment and appointment provided by s. 943.13, F.S., and must be certified as law enforcement officers, as defined in s. 943.10(1), F.S. The DGE director and such investigators must be designated law enforcement officers and must have the power to detect, apprehend, and arrest for any alleged violation of ch. 24, F.S. (State Lotteries), part II of ch. 285, F.S. (Gaming Compact), 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), or any rule adopted pursuant thereto, or any law of this state. Such law enforcement officers may enter upon any premises at which gaming activities are taking place in the state for the performance of their lawful duties and may take with them any necessary equipment, and such entry does not constitute a trespass. In any instance in which there is reason to believe that a violation has occurred, such officers have the

authority, without warrant, to search and inspect any premises where the violation is alleged to have occurred or is occurring.

The bill provides that any such officer may, consistent with the United States and Florida Constitutions, seize or take possession of any papers, records, tickets, currency, or other items related to any alleged violation. Investigators employed by the commission also have access to, and the right to inspect, premises licensed by the commission, to collect taxes and remit them to the officer entitled to them, and to examine the books and records of all persons licensed by the commission.

The DGE and its investigators are specifically authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. The term “contraband” has the same meaning as the term “contraband article” in s. 932.701(2)(a)2., F.S. The DGE is specifically authorized to store and test any contraband that is seized in accordance with the Florida Contraband Forfeiture Act and may authorize any of its staff to implement this provision. The authority of any other person authorized by law to seize contraband is not limited by these provisions.

Under the bill, the Department of Law Enforcement must provide assistance in obtaining criminal history information relevant to investigations required for honest, secure, and exemplary gaming operations, and such other assistance as may be requested by the commission’s executive director and agreed to by the executive director of the Department of Law Enforcement. Any other state agency, including the Department of Business and Professional Regulation and the Department of Revenue, must, upon request, provide the commission with any information relevant to any investigation conducted as described above. The commission must reimburse any agency for the actual cost of providing any such assistance.

### **Commission Authority, Duties, and Responsibilities**

**Section 4** creates s. 16.712, F.S., to require, effective July 1, 2022, that the commission do all of the following:

- Exercise all of the regulatory and executive powers of the state with respect to gambling, including 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, excluding state lottery games as authorized by the State Constitution.
- Establish procedures consistent with ch. 120, F.S., the Administrative Procedure Act, to ensure adequate due process in the exercise of the commission’s regulatory and executive functions.
- Ensure that the laws of this state are not interpreted in any manner that expands the activities authorized in ch. 24, F.S. (State Lotteries), part II of ch. 285, F.S. (Gaming Compact), 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 the rules and regulations promulgated by the Seminole Tribal Gaming Commission for the operation of sports betting and propose to the Seminole Tribe Gaming Commission any additional consumer protection measures it deems appropriate. The proposed consumer protection measures may include, but are not limited to, the types of advertising and marketing conducted for sports betting, the types of procedures implemented to prohibit

- underage persons from engaging in sports betting, and the types of information, materials, and procedures needed to assist patrons with compulsive or addictive gambling problems.
- Evaluate, as the state compliance agency or as the commission, information that is reported by sports governing bodies or other parties to the commission related to:
    - Any abnormal betting activity or patterns that may indicate a concern about the integrity of a sports event or events;
    - Any other conduct with the potential to corrupt a betting outcome of a sports event for purposes of financial gain, including, but not limited to, match fixing; suspicious or illegal wagering activities, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, use of agents to place wagers, or use of false identification; and
    - The use of data deemed unacceptable by the commission or the Seminole Tribal Gaming Commission.
  - The commission must provide reasonable notice to state and local law enforcement, the Seminole Tribal Gaming Commission, and any appropriate sports governing body of non-proprietary information that may warrant further investigation of the above information by such entities to ensure integrity of wagering activities in the state.
  - Review any matter within the scope of the jurisdiction of the Division of Pari-mutuel Wagering.
  - Review the regulation of licensees, permitholders, or persons regulated by the Division of Pari-mutuel Wagering and the procedures used by the division to implement and enforce the law.
  - Review the procedures of the Division of Pari-mutuel Wagering which are used to qualify applicants applying for a license, permit, or registration.
  - Receive and review violations reported by a state or local law enforcement agency, the Department of Law Enforcement, the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of the Lottery, the Seminole Tribe of Florida, or any person licensed under ch. 24, F.S. (State Lotteries), part II of ch. 285, F.S. (Gaming Compact), 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 determine whether such violation is appropriate for referral to the Office of Statewide Prosecution.
  - Refer criminal violations of ch. 24, F.S. (State Lotteries), part II of ch. 285, F.S. (Gaming Compact), 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, and adopt rules to implement the above.

The commission may 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 performance of the duties of the commission or to the exercise of its powers.

The commission may submit written recommendations to enhance the enforcement of gaming laws of the state to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

By December 1 of each year, the commission must annually report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must, at a minimum, include all of the following:

- Recent events in the gaming industry, including pending litigation, pending facility license applications, and new and pending rules.
- Commission actions for the implementation and administration of its duties and responsibilities.
- The state revenues and expenses associated with each form of authorized gaming. Revenues and expenses associated with pari-mutuel wagering must be further delineated by the class of license.
- The performance of each pari-mutuel wagering licensee, cardroom licensee, and slot licensee.
- Commission actions as the state compliance agency, and financial information published by the Office of Economic and Demographic Research, relative to gaming activities authorized pursuant to s. 285.710(13), F.S. (authorized gaming activity by the Seminole Tribe of Florida pursuant to the 2021 Gaming Compact).
- A summary of disciplinary actions taken by the commission.
- The receipts and disbursements of the commission.
- A summary of actions taken and investigations conducted by the commission.
- Any additional information and recommendations that the commission considers useful or that the Governor, the President of the Senate, or the Speaker of the House of Representatives requests.

The commission must develop an annual legislative budget request pursuant to ch. 216, F.S. Such request is not subject to change by the Department of Legal Affairs or the Attorney General, but must be submitted by the Department of Legal Affairs to the Governor for transmittal to the Legislature.

The commission is authorized to contract or consult with appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties. The commission must exercise all of its regulatory and executive powers and must adopt, apply, construe, and interpret all laws and administrative rules in a manner consistent with the 2021 Gaming Compact.

The commission must confirm, prior to the issuance of an operating license, that each permitholder has submitted proof with their annual application for a license, in such a form as the commission may require; that the permitholder continues to possess the qualifications prescribed by ch. 550, F.S. (Pari-mutuel Wagering), and that the permit has not been disapproved by voters in an election.

This section is effective July 1, 2022.

## **Appointment and Employment Restrictions and Requirements**

**Section 5** creates s. 16.713, F.S., to provide that certain persons are ineligible for appointment to the commission, including a person who:

- Holds any office in a political party.
- Within the previous 10 years has been convicted or found guilty of or has plead nolo contendere to, regardless of adjudication, in any jurisdiction, any felony, or a misdemeanor that directly relates to gambling, dishonesty, theft, or fraud.
- Has been convicted of or found guilty of or pled nolo contendere to, regardless of adjudication, in any jurisdiction, a crime listed in s. 775.21(4)(a)1. or s. 776.08, F.S., relating to sexual predator crimes and forcible felonies, respectively.
- Had a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), or a gaming license issued by any other jurisdiction denied, suspended, or revoked.

### ***Prohibitions for Commission Employees and Commissioners; Ineligibility***

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), or a license issued under ch. 551, F.S., (Slot Machines), 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;
- 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;
- Be or have been, a member of the Legislature;
- Be a registered lobbyist for the executive or legislative branch, except while a commissioner when officially representing the commission; or
- Be a bingo game operator or an employee of a bingo game operator;

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;
- 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;

---

<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.”

- A contractor or subcontractor of such tribe or an entity employed, licensed, or contracted by such tribe; or
- An ultimate equitable owner, as defined in s. 550.002(37), F.S., of such entity;

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.

A person who is ineligible for employment with the commission due to being a relative of one of the persons described above may submit a waiver request to the commission for the person to be considered eligible for employment. Waiver requests must be considered on a case-by-case basis, and the commission must approve or deny each request. If the commission approves the request, the person is eligible for employment with the commission. The waiver procedure does not apply to candidates for appointment to the commission.

A person is ineligible for employment with the commission if:

- Convicted or found guilty of, or pled nolo contendere to, regardless of adjudication, in any jurisdiction, a felony within five years of the date of application;
- Convicted or found guilty of, or pled nolo contendere to, regardless of adjudication, in any jurisdiction, a misdemeanor within five years of the date of application which the commission determines bears a close relationship to the duties and responsibilities of the position for which employment is sought; or
- Dismissed from prior employment for gross misconduct or incompetence or intentionally making a false statement concerning a material fact in connection with the application for employment to the commission.

If an employee of the commission is charged with a felony while employed by the commission, the commission must suspend the employee, with or without pay, and terminate employment with the commission upon conviction. If an employee is charged with a misdemeanor while employed, the commission must suspend the employee, with or without pay, and may terminate employment upon conviction if the commission determines that the offense bears a close relationship to the duties and responsibilities of the position held with the commission.

A commissioner or an employee must notify the commission within three calendar days of arrest for any offense. In addition, a commissioner or an employee must provide detailed written notice of the circumstances to the commission if the member or employee is indicted, charged with, convicted of, pleads guilty or nolo contendere to, or forfeits bail for:

- A misdemeanor involving gambling, dishonesty, theft, or fraud;
- A violation of any law in any state, or a law of the United States or any other jurisdiction, involving gambling, dishonesty, theft, or fraud which would constitute a misdemeanor in Florida; or
- A felony under the laws of Florida or any other state, the United States, or any other jurisdiction.



## **Standards of Conduct and Ex Parte Communications**

**Section 7** creates s. 16.715, F.S., relating to standards of conduct and ex parte communications. The bill provides commissioners are public officers, and employees are public employees, subject to the Code of Ethics for Public Officers and Employees set forth in part III of ch. 112, F.S., (Code of Ethics). Commissioners and employees 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 or a commission employee:

- 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.
- May not act 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.

While employed, and for two years after service or employment with the commission, a commissioner or employee:

- 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 sell any prohibited financial interest; if the commissioner, the employee, or a relative (defined in s. 16.713(2)(b), F.S., created by the bill) living in the same household as a commissioner or an employee acquires such prohibited financial interest during his or her term of office as a result of events or actions beyond the commissioner's, the employee's, or the relative's control.
- 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 thing, 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 thing, 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 personally represent before the commission another person or entity for compensation, unless employed by another state agency.

Under the bill, a commissioner:

- 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 lobby the Governor or any state agency, members or employees or the Legislature, or any county or municipal government or governmental agency, except to represent the commission in an official capacity.

The above standards of conduct may be more restrictive than the Code of Ethics, but may not be construed to contravene the 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.

A commissioner, commission employee, or a relative living in the same household may not place a wager in any facility licensed by the commission or operated by an Indian tribe that has a valid and active compact with the state.

### ***Background Screening Requirements***

**Section 6** creates s. 16.714, F.S., to require the Department of Law Enforcement, at the request of the DGE, to perform a Level 2 background screening pursuant to ch. 435, F.S., on an employee of the DGE and on any other commission employee that commission deems a level 2 background screening is necessary, including applicants for employment. The commission must reimburse the Department of Law Enforcement for the actual costs of such investigations.

In addition, the Department of Law Enforcement must, at the request of the DGE, perform a Level 1 background screening pursuant to ch. 435, F.S., on any other commission employees, including applicants for employment, that are not subjected to a Level 2 background screening as described above.

The DGE must conduct investigations of members and commission employees, including applicants for contract or employment, as necessary to ensure the security and integrity of gaming operations in this state. The commission may require persons subject to such investigations to provide information, including fingerprints, as needed by the Department of Law Enforcement for processing, or as is otherwise necessary to facilitate access to state and federal criminal history information.

### **Restrictions After Appointment or Employment**

For the two years immediately following the date of resignation or termination from the commission, a commissioner or an employee may not:

- Personally represent another person or entity for compensation before the executive or legislative branch, unless employed by another agency of state government;
- Hold a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), a license issued under ch. 551, F.S., (Slot Machines), 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., of such permitholder or licensee.
- Appear before the commission representing any client or industry regulated by the commission.

- Lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency; or
- Be a bingo game operator or an employee of a bingo game operator.

In addition, for the two years immediately following the date of resignation or termination from the commission, a commissioner may not accept employment by or compensation from:

- A business which, directly or indirectly, owns or controls a person regulated by the commission;
- A person regulated by the commission;
- A business entity which, directly or indirectly, is an affiliate or subsidiary of a person regulated by the commission; or
- A business entity or trade association that has been a party to a commission proceeding within the two years preceding the member's resignation or termination of service on the commission.

Violations are subject to the penalties for violations of standards of conduct for public officers, employees of agencies, and local government attorneys provided in s. 112.317, F.S., and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

### *Ex Parte Communications*

The bill defines "ex parte communications" as any communication that is:

- Not served on all parties to a proceeding, if the communication is written or printed or in electronic form; or
- Made without adequate notice to the parties and without an opportunity for the parties to be present and heard, if it is an oral communication.

A commissioner may not initiate or consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding that is currently pending before the commission. An individual may not discuss ex parte with a commissioner the merits, threat, or offer of reward regarding any issue in a proceeding that is pending before the commission. These prohibitions do not apply to commission staff.

If a commissioner knowingly receives a prohibited ex parte communication relative to a proceeding to which the commissioner 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 the commissioner 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. 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 8** amends s. 20.055, F.S., relating to agency inspectors general, to include the chair of the commission as an “agency head,” and the commission as a “state agency” under that section.

**Section 9** amends s. 20.165, F.S., effective, July 1, 2022, to remove the Division of Pari-mutuel Wagering as a division within the Department of Business and Professional Regulation.

**Section 10** 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 2021 Gaming Compact with the Seminole Tribe, rather than the division.

**Section 11** 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, cardrooms, and the state compliance agency's oversight responsibilities for authorized gaming compacts. Those employees transferred from the DBPR to the commission retain and transfer accrued leave balances. Effective July 1, 2022, the Pari-mutuel Wagering Trust Fund under s. 455.116, F.S., is transferred from the DBPR to the commission.

**Section 12** amends s. 932.701, F.S., to include in the definition of "contraband article" certain gaming related terms, including equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, and Internet domain name. This section also updates the violations in this section to include violations of ch. 24, F.S., (State Lotteries), part II of ch. 285, F.S., (Gaming Compact), 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).

**Section 13** directs the Division of Law Revision to prepare a reviser's bill effective July 1, 2022, to conform the Florida Statutes to the Type Two transfer described in Section 11.

**Section 14** provides, for Fiscal Year 2021-2022, the sum of:

- \$2,000,000 in nonrecurring funds from the General Revenue Fund is appropriated and 15 positions with associated salary rate of 1,250,000 are authorized to the commission for the purposes of implementing the act; to support five commissioners, an executive director, general counsel, and other agency personnel as needed; and to cover all expenditures of the commission including, but not limited to, salaries and benefits, travel, background investigations, and fingerprinting fees; and
- \$100,000 in nonrecurring funds from the General Revenue Fund is appropriated to the DBPR for administrative support related to the commission during Fiscal Year 2021-2022, including, but not limited to, human resource management, accounting, and budgeting.

**Section 15** provides the DBPR, in coordination with the Department of Legal Affairs and the Department of Management Services, must establish a working group to prepare the commission's legislative budget request for Fiscal Year 2022-2023, for submission by the DBPR. The working group must develop estimates for the amount of money needed for administration of the commission, including, but not limited to, costs relating to overall staffing and administrative support; infrastructure and office space; integration of technology systems and data needs and transfers; law enforcement accreditation, staffing, and training; organizational structure; and other matters deemed necessary or appropriate by the working

group, to assure the seamless establishment of the commission and orderly transition of the duties and responsibilities under the Type Two transfer described in Section 11.

This section is effective upon becoming a law.

**Section 16** provides that if any law amended by the act was also amended by a law enacted during the 2021 Regular Session of the Legislature, such laws must be construed as if they had been enacted during the same session of the Legislature, and full effect must be given to each if possible.

**Section 17** provides that except as otherwise expressly provided in the bill, the bill takes effect on the same date that SB 2-A (Implementation of the 2021 Gaming Compact between the Seminole Tribe of Florida and the State of Florida) or similar legislation takes effect, if adopted in the same legislative session or any extension, and becomes a law.

#### **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), to be administratively housed within the Department of Legal Affairs, Office of the Attorney General. For Fiscal Year 2021-2022, the sum of \$2,000,000 in nonrecurring funds from the General Revenue Fund is appropriated and 15 positions with associated salary rate of 1,250,000 are authorized to the commission for the purposes of implementing the act. Such funds will support five commissioners, the executive director, general counsel, and other agency personnel as needed. The funds will cover all expenditures of the commission including, but not limited to, salaries and benefits, travel, background investigations, and fingerprinting fees.

For Fiscal Year 2021-2022, the sum of \$100,000 in nonrecurring funds from the General Revenue Fund is appropriated to the Department of Business and Professional Regulation (DBPR) for administrative support related to the commission during that period, including, but not limited to, human resource management, accounting, and budgeting.

Effective July 1, 2022, 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, 20.055, 20.165, 285.710, and 932.701.

This bill creates the following sections of the Florida Statutes: 16.71, 16.711, 16.712, 16.713, 16.714, and 16.715.

The bill creates undesignated sections of Florida law.

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

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

**CS by Appropriations on May 17, 2021:**

The committee substitute:

- Requires the Governor to consider appointees to the Florida Gaming Control Commission who reflect Florida's racial, ethnic, and gender diversity; and



- Replaces the term “prohibited gift” with “prohibited thing” under the standard of conduct that prohibits commissioners and employees from accepting anything from parties in a pending proceeding.

**B. Amendments:**

None.

---

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

---