HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 21-03 Gaming Enforcement
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

In general, gambling is illegal in Florida. However, certain gaming activities are authorized by law and regulated by the state, including the state lottery, pari-mutuel wagering at licensed greyhound and horse tracks and jai alai frontons, slot machine gaming at certai n licensed pari-mutuel locations in Miami-Dade County and Broward County, cardrooms at certain pari-mutuel facilities, penny-ante games, bingo, charitable drawings, game promotions (sweepstakes), and bowling tournaments.

In Florida, the investigation of illegal gambling is handled by law enforcement officers (as opposed to regulators). In the absence of an overarching state gaming regulatory authority, local or county law enforcement and prosecutors are assigned such matters. For example, the Department of Business and Professional Regulation (DBPR), Division of Pari-Mutuel Wagering (division) does not have authority over illegal gaming, though as in other states it may obtain information on such matters. As a result, the actual prosecution of such matters is normally referred to the county or local prosecuting authority.

The bill creates the Florida Gaming Control Commission (commission) and establishes additional enforcement measures to address violations of gambling laws and the conduct of unauthorized gaming in the state, including granting additional investigatory and prosecutorial authority to the Office of Statewide Prosecution in the Department of Legal Affairs (DLA).

The bill establishes requirements and standards for the commission, commissioners and its employees, including:

- Conflict of interest and ethics requirements.
- Background screenings.
- Annual recertification of pari-mutuel operating licensees.
- Inspection, taxation, and law enforcement authority.
- Authority to seize illegal gaming contraband.
- Subpoena powers.
- Review of the division’s licensure and application procedures.
- Prohibition of ex parte communication.

Effective July 1, 2022:

- Provides that the commission is the state compliance agency to carry out the state’s oversight responsibilities under the 2010 Compact with the Seminole Tribe.
- Provides for a type two transfer from DBPR to the commission, therefore the commission will become the regulatory agency for pari-mutuel wagering, cardroom, and slot machine licensees.
- Requires DLA to provide administrative support to the commission until the transfer is complete.
- Directs the Division of Law Revision to prepare a reviser’s bill to conform the type two transfer.

The bill may have an indeterminate negative fiscal impact on state and local government.

The bill, except as otherwise expressly provided, is effective on the same date that PCB COM 21-05 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

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

- Pari-mutuel[5] wagering at licensed greyhound and horse tracks and jai alai frontons;[6]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[7] and
- Cardrooms[8] at certain pari-mutuel facilities.[9]

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.[10]

The 1968 State Constitution states that "lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[11] 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.[12]

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[13] bingo,[14] charitable drawings,[15] game promotions (sweepstakes),[16] and bowling tournaments.[17]

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[1] S. 849.08, F.S.
[2] S. 849.01, F.S.
[3] S. 849.09, F.S.
[4] S. 849.16, F.S.
[5] "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.
[6] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[7] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.
[8] S. 849.086(2)(c), F.S., defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[9] The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2021-2022 Operating Licenses to operate 27 cardrooms. *See* http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 7, 2021).
[10] *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).
[11] 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.
[12] 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.
[13] S. 849.085, F.S.
[14] S. 849.0931, F.S.
[15] S. 849.0935, F.S.
[16] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[17] S. 849.141, F.S.

The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.[18]

Lotteries

Section 7 of Article X of the 1968 State Constitution provides, "Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state."[19]

To allow activities that would otherwise be illegal lotteries, the Legislature has carved out several narrow exceptions to the statutory lottery prohibition. Statutory exceptions are provided for charitable bingo, charitable drawings, and game promotions. Charities use drawings or raffles as a fundraising tool. Organizations suggest a donation, collect entries, and randomly select an entry to win a prize. Under s. 849.0935, F.S., qualified organizations may conduct drawings by chance, provided the organization has complied with all applicable provisions of Chapter 496, F.S. Game promotions, often called sweepstakes, are advertising tools by which businesses promote their goods or services. As they contain the three elements of a lottery: consideration, chance, and prize, they are generally prohibited by Florida law unless they meet a statutory exception.[20]

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. The Florida Lottery—known formally as the Florida Education Lotteries—benefits education by funding the State Education Lotteries Trust Fund. Section 15 of Article X of the State Constitution (adopted by the electors in 1986) provides as follows:

> Lotteries may be operated by the state…. On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.[21]

Indian Gaming and Regulatory Act

Gambling on Indian lands is subject to federal law, with limited state involvement. The Indian Gaming and Regulatory Act (IGRA), codified at 25 USCA §§ 2701-2721, was enacted in 1988 in response to the United State Supreme Court decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). The act provides for "a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between tribes and States for regulation of class III gaming."[22] In so doing, IGRA seeks to balance the competing interests of two sovereigns: the interests of the Tribe in engaging in economic activities for the benefit of its members and the interest of the state in either prohibiting or regulating gaming activities within its borders.[23]

IGRA separates gaming activities into three categories:

- Class I games are "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations."[24] Class I games are within the exclusive jurisdiction of the Indian tribes.[25]

[18] S. 546.10, F.S.
[19] 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 new state constitution was ratified by the electorate on November 5, 1968.
[20] *Little River Theatre Corp v. State*, 185 So. 854, 868 (Fla. 1939).
[21] The Department of the Lottery is authorized by Article X, Section 15 of the Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., creates the Department of the Lottery and states the Legislature's intent that it be self-supporting and revenue-producing and function as an entrepreneurial business enterprise.
[22] United States Senate Report No. 100-446, Aug. 3, 1988.
[23] *Id.*
[24] 25 U.S.C. 2703(6).
[25] 25 U.S.C. 2710(a)(1).

- Class II games are bingo and card games that are explicitly authorized or are not explicitly prohibited by the laws of the State.[26] The tribes may offer Class II card games "only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games." Class II gaming does not include "any banking card games, including baccarat, chemin de fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind."[27] Class II games are also within the jurisdiction of the Indian tribes, but are also subject to the provisions of IGRA.[28]
- Class III games are defined as any games that are not Class I or Class II. Class III games include slot machines and banked card games such as blackjack, baccarat and chemin de fir.[29]

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

- If the state authorizes Class III games for any purpose to any person, organization, or entity, the tribe must:
  - Authorize the games by an ordinance or resolution adopted by the governing body of the Indian tribe, approved by the Chairman of the National Indian Gaming Commission, and in compliance with IGRA; and
  - Conduct the games in conformance with a Tribal-State compact entered into between the tribe and the State.[30]
- If the state does NOT authorize Class III gaming for any purpose by any person, organization, or entity, the tribe must request negotiations for a tribal-state compact governing gaming activities on tribal lands. Upon receiving such a request, the state may be obligated to negotiate with the Indian tribe in good faith.[31] Under IGRA, a tribe is not entitled to a compact.

When the negotiations fail to produce a compact, a tribe may file suit against the state in federal court and seek a determination of whether the state negotiated in good faith. If the court finds the state negotiated in good faith, the tribe's proposal fails. On a finding of lack of good faith by the state, however, the court may order negotiation, followed by mandatory mediation. If the state ultimately rejects a court-appointed mediator's proposal, the Secretary "shall prescribe, in consultation with the Indian tribe, procedures... under which class III gaming may be conducted."[32]

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

- The application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of gaming;
- The allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of laws and regulations;
- An assessment in an amount necessary to defray the costs of regulation;
- Revenue sharing by the Indian tribe for permitted activities;
- Remedies for breach of contract;
- Standards for the operation of gaming and gaming facilities, including licensing; and
- Any other subjects that are directly related to the operation of gaming activities.[33]

Any compact that is entered into by a tribe and a state will take effect when approval by the Secretary of the Interior is published in the Federal Register.[34] Upon receipt of a proposed compact, the Secretary

[26] 25 U.S.C. 2703(7)(A).
[27] 25 U.S.C. 2703(7)(B).
[28] 25 U.S.C. 2710(a)(2) and (b).
[29] 25 U.S.C. 2703; 25 C.F.R. § 502.4.
[30] 25 U.S.C. 2710(d)(1).
[31] 25 U.S.C. 2710 (d)(3)(A).
[32] 25 U.S.C. 2710(d)(7). This option is addressed in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), which brought into question whether a tribe has the ability to judicially enforce the provisions of IGRA against a state. The Department of the Interior adopted rules to provide a remedy for the tribes. The validity of the rules were brought into question in *Texas v. United States*, 497 F.3d 491, (5th Cir. 2007).
[33] 25 U.S.C. 2710 (d)(3)(C).
[34] 25 U.S.C. 2710(d)(3)(B).

has 45 days to approve or disapprove the compact.[35] A compact will be considered approved if the Secretary fails to act within the 45-day period. A compact that has not been validly "entered into" by a state and a tribe (e.g., execution of a compact by a state officer who lacks the authority to bind the state) cannot be put "into effect", even if the Secretary of the Interior publishes the compact in the Federal Register.[36]

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

> Nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3) (A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.[37]

Notwithstanding this restriction, revenue sharing is permissible so long as the tribe receives a valuable economic benefit in return. Typically, such benefit is in the form of substantial exclusivity in game offerings, geographic monopoly and/or a right to conduct such offerings on more favorable terms than non-Indians.[38]

The 2010 Compact

The Tribe and the State executed the 2010 Compact on April 7, 2010, which was ratified through Chapter 285, F.S. The 2010 Compact took effect when published in the Federal Register on July 6, 2010 and all but the banked card game authorization has a term of 20 years, expiring July 31, 2030, unless renewed.

The 2010 Compact provides for revenue sharing from the Tribe to the State. For the exclusive authority to offer banked card games on tribal lands at five locations for five years and to offer slot machine gaming outside Miami-Dade and Broward Counties, the Tribe pays the State a share of "net win" Revenue sharing payments were approximately $240 million per year. The 2010 Compact required the Tribe to share revenue with the State in the amount of $1 billion over the first five years.

Section 285.710(1)(f), F.S., designates the Division within DBPR as the "state compliance agency" responsible for carrying out the state's oversight responsibilities under the 2010 Compact.

The State of Florida retains the right to authorize or prohibit gaming in the state. However, the 2010 Compact provides consequences for the expansion of gaming:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuel facilities located in Miami-Dade and Broward counties (which may not relocate) and the net win from the Tribe's Broward facilities drops for the year after the new gaming begins, then the Tribe may reduce the payments from its Broward facilities by 50 percent of the amount of the reduction in net win.
- If new forms of Class III gaming and other casino-style gaming are authorized for other locations in Miami-Dade and Broward counties, then the Tribe may exclude the net win from their Broward facilities from their net win calculations when the new games begin to be played.[39]

Revenue sharing payments cease if:

- The state authorizes new forms of Class III gaming or other casino-style gaming after February 1, 2010, or authorizes Class III gaming or other casino-style gaming at any location outside of

[35] 25 U.S.C. 2710(d)(8)(C).
[36] *See Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir. 1997).
[37] 25 U.S.C. 2710(d)(4).
[38] *See generally In re Indian Gaming Related Cases*, 331 F.3d 1094 (9th Cir. 2003)(upholding revenue sharing where revenues were apportioned to non-gaming tribes); *see also* Letter From Gale A. Norton, Secretary of the Department of the Interior, to Cyrus Schindler, President of the Seneca Nation of Indians, November 12, 2002.
[39] The Tribe would automatically be authorized to conduct the same games authorized for any other person at any location.

Miami-Dade and Broward counties that was not authorized for such games before February 1, 2010; and
- The new gaming begins to be offered for private or public use.

Starting in July 2015, DBPR and the Seminole Tribe engaged in litigation over the conduct of "designated player" card games at pari-mutuel facilities.

On November 9, 2016 a federal court ruled that the State had violated the terms of the Compact and the Tribe was entitled to continue offering banked card games beyond the initial 5-year blackjack authorization and may continue offering such games for the entire 20-year term of the Compact (expiring July 2030). The Tribe continued to make full revenue sharing payments to the State throughout the course of the litigation. The parties did not raise, and consequently the ruling did not address, the future revenue sharing obligations of the Tribe.

The parties subsequently executed a settlement agreement in July 2017, which was extended in April 2018. Under the settlement agreement, the Tribe agreed to continue revenue sharing payments provided that DBPR "aggressively enforced" the statutory ban on banking card games.

In April 2019 the Tribe stopped revenue sharing payments to the State because the Tribe believed that aggressive enforcement had not occurred.

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.[40]

Ten permitholders were not issued operating licenses for Fiscal Year 2020-2021: two greyhound permitholders,[41] two jai alai permitholders,[42] one limited thoroughbred permitholder,[43] and five quarter horse permitholders.[44]

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

[40] Department of Business and Professional Regulation Division of Pari-mutuel Wagering, *89th Annual Report for Fiscal Year 2019-2020*, AnnualReport-2019-2020--89th--20210224.pdf pg. 5, (last visited Apr. 7, 2021).
[41] Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).
[42] Gadsden Jai-alai (Chattahoochee) and Tampa Jai Alai.
[43] 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.
[44] 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 (last visited Apr. 7, 2021).

- A statement showing qualifications of the applicant to conduct pari-mutuel performances under ch. 550, F.S.

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

- Harness horse racing, quarter horse racing, thoroughbred horse racing, or greyhound racing at a location within 100 miles of an existing pari-mutuel facility; or
- Jai alai games within 50 miles of an existing pari-mutuel facility.[45]

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.[46]

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.[47]

The division may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of ch. 550, F.S., or any administrative rule adopted by the division, and may impose a civil penalty against the permitholder or license up to $1,000 for each offense.[48]

Slot Machine Gaming Locations and Operations

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

Current law addresses slot machine gaming operations as follows:

- Restricts 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;[49]
- Limits slot machine gaming to 18 hours per day, Monday through Friday, and 24 hours on Saturdays and Sundays;[50] and
- Prohibits the service of complimentary or reduced-cost alcoholic beverages to persons playing a slot machine, among other prohibitions.[51]

Cardrooms

Section 849.086, F.S., authorizes cardrooms at certain pari-mutuel facilities.[52] In Fiscal Year 2021-2022, 27 cardrooms are licensed to operate.[53] A license to offer pari-mutuel wagering, slot machine

[45] S. 550.054(2), F.S.
[46] *Id.*
[47] S. 550.054(9)(a), F.S.
[48] S. 550.054(9)(b), F.S.
[49] S. 551.104(3), F.S.
[50] S. 551.116, F.S.
[51] S. 551.121, F.S.
[52] S. 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.
[53] Department of Business and Professional Regulation, *Pari-mutuel Wagering – Permitholder Operating Licenses 2021-2022*, http://www.myfloridalicense.com/DBPR/pari-mutuel-wagering/permitholder-operating-licenses-2021-2022/ (last visited Apr. 7, 2021).

gaming, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[54] A cardroom may be open 18 hours per day on Monday through Friday, and 24 hours per day on Saturday and Sunday.[55]

Sections 849.086(5) and (6), F.S., provide that a licensed pari-mutuel permitholder that holds a valid pari-mutuel permit may hold a cardroom license authorizing the operation of a cardroom and the conduct of authorized games at the cardroom. An authorized game is a game or series of games of poker or dominoes.[56] Such games must be played in a non-banking manner,[57] where the participants play against each other, instead of against the house (cardroom). At least four percent of the gross cardroom receipts of greyhound racing permitholders and jai alai permitholders conducting live races or games must supplement greyhound purses, and quarter horse permitholders must have a contract with a horsemen's association governing the payment of purses on live quarter horse races conducted by the permitholder.[58]

Live Performance Requirements

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.[59] Currently the State requires that:

- To offer intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing as defined in ch. 550 and meet other requirements.[60]
- To remain eligible for a cardroom license, permitholders must conduct at least 90 percent of the performances conducted the year they applied for the initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances.[61]
- To remain eligible for a slot machine license, permitholders must conduct a full schedule of live racing as defined in ch. 550.[62]

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

During the 2018 General Election, the electorate approved an initiative constitutional amendment (Amendment 3, Voter Control of Gambling in Florida). The amendment is codified in the State Constitution as article X, section 30).[63]

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 C.F.R. § 502.4 upon the adoption of the amendment and any that are added to such definition of Class III gaming in the future.

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

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[54] *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."

[55] S. 849.086(7)(b), F.S.

[56] S. 849.086(2)(a), F.S.

[57] *Id.*

[58] S. 849.086(13)(d), F.S.

[59] *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").

[60] S. 550.615, F.S.

[61] s. 849.086(5)(b), F.S.

[62] s. 551.104(4)(c), F.S.

[63] See the text of Amendment 3, now codified as art. X, s. 30, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes&CFID=44933245&CFTOKEN=f39b1ca7cab71561-BE329BC7-5056-B837-1A6123F335C4849F#A10S30 (last visited Apr. 7, 2021).

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

Section (b) of Amendment 3 also further defines "casino gambling" as including the following devices:
- Any electronic gambling devices;
- Simulated gambling devices;
- Video lottery devices;
- Internet sweepstakes devices; and
- Any other form of electronic or electromechanical facsimiles of any game of chance, slot machine, or casino-style game, regardless of how such devices are defined under the Indian Gaming Regulatory Act.

Under Amendment 3, the term casino "casino gambling" does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions. For the purposes of Amendment 3, "gambling" and "gaming" are synonymous.

Additionally, Amendment 3 provides:

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

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

Amendment 13 to the State Constitution (Prohibition on Racing of and Wagering on Greyhounds or Other Dogs)

During the 2018 General Election, the electorate approved an initiative constitutional amendment (Amendment 13, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs). The amendment is codified in the State Constitution as article X, section 32.[64]

Amendment 13 states that, beginning on January 1, 2019, greyhound tracks may discontinue live greyhound racing while continuing to operate its other forms of gaming. Beginning on January 1, 2021, Amendment 13 completely prohibits wagering on live greyhound racing in Florida, requiring the closure of all greyhound racetracks in the state. Cardroom and slot machine facilities at the greyhound tracks may continue to operate after the closure of racing activities.

[64] [64] See the text of Amendment 13, now codified as art. X, s. 32, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S32 (last visited Apr. 11, 2021).

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.[65]

Regulatory resources cited by NCLGS include the:

- Association of Racing Commissioners International, Inc. (ARCI), a non-profit corporation founded in the 1930's to uphold uniform pari-mutuel racing rules and practice, serves as a resource for pari-mutuel rulings, including equine medication issues. The ARCI works to preserve the integrity of horseracing, jai-alai, and dog-racing.[66]
- North American Gaming Regulators Association (NAGRA), created in 1984, includes as members federal, state, local, tribal, and provincial government gaming regulators.[67]
- 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.[68]
- 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.[69]

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.[70] Two of the most well-known gaming control entities are the Nevada Gaming Commission and Gaming Control Board,[71] and the New Jersey Casino Control Commission.[72]

In Nevada, members of the Board and Commission are appointed by the Governor of Nevada to four-year terms. In addition to other requirements, each member must be a resident of Nevada and no member may hold elective office while serving. Members are also not permitted to possess any direct pecuniary interest in gaming activities while serving in their capacity as members.[73]

The New Jersey Casino Control Commission is the independent licensing authority of the state's casinos and key employees, comprised of up to three members, appointed by the governor and confirmed by the state senate.[74] As a quasi-judicial panel, the commission conducts hearings on contested casino key employee license matters, and appeals 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.[75] 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

[65] The National Council of Legislators from Gaming States, https://www.nclgs.org/index.php/about-us (last visited Apr. 7, 2021).
[66] Association of Racing Commissioners International, http://arci.com/ (last visited Apr. 7, 2021).
[67] North American Gaming Regulators Association, https://www.nagra.org/default.aspx (last visited Apr. 7, 2021).
[68] National Indian Gaming Commission, https://www.nigc.gov/ (last visited Apr. 7, 2021).
[69] International Association of Gaming Regulators https://www.iagr.org/ (last visited April 10, 2021).
[70] See links to the numerous state and province gaming regulatory agencies, commissions, control boards, and lotteries at https://www.nagra.org/State-and-Province-Gaming-Regulatory-Agencies (last visited Apr. 7, 2021).
[71] Nevada Gaming Commission and Gaming Control Board, https://gaming.nv.gov/ (last visited Apr. 7, 2021).
[72] New Jersey Casino Control Commission, https://www.nj.gov/casinos/ (last visited Apr. 7, 2021).
[73] Nevada Gaming Control Board, *Information Packet*, https://gaming.nv.gov/index.aspx pg. 3, (last visited Apr. 7, 2021).
[74] New Jersey Casino Control Commission, *Overview*, https://www.nj.gov/casinos/about/overview/ (last visited Apr. 7, 2021
[75] *Id*.

good character, honesty and integrity. Stewardship over that public confidence is a principal responsibility of the Commission and its Chairman.
- The 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.[76]

Effect of the Bill

Department of Legal Affairs Office of Statewide Prosecution

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

Florida Gaming Control Commission

The bill creates s. 16.71, F.S., to establish a Gaming Control Commission (commission), to be administratively housed in the Department Legal Affairs, Office of the Attorney General. The commission is a separate budget entity and serves as the agency head for all purposes, and is a criminal justice agency as defined in s. 119.011, F.S. 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.

The commission consists of five members, one from each appellate district, to be appointed by the Governor by January 1, 2022, subject to Senate confirmation. Of the five members:
- At least one member with at least 10 years of experience in law enforcement and criminal investigation.
- 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.
- 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 8 years. The salary of a member is the same as a commissioner serving on the Public Service Commission (approximately $136,000 annually).

A person is ineligible for appointment to the commission if they have:
- Been convicted of or found guilty of or pleading nolo contendere to, regardless of adjudication, in any jurisdiction, a felony or misdemeanor that directly relates to related to gambling, dishonesty, theft, or fraud within the 10 years immediately preceding such appointment;
- Been convicted of or found guilty of or pleading nolo contendere to, regardless of adjudication, in any jurisdiction, a forcible felony or a sexual predator crime; or
- Had a permit or license issued under 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 a gaming licensed issued by any other jurisdiction denied, suspended, or revoked.

The Governor may remove a member for cause, including, but not limited to, circumstances in which the member:
- Commits gross misconduct or malfeasance in office;

[76] *Id.*

- Substantially neglects or is unable to discharge his or her duties as a member; or
- Is convicted of or found guilty of or pleading nolo contendere to, regardless of adjudication, in any jurisdiction, a felony or misdemeanor that directly relates to related to gambling, dishonesty, theft, or fraud.

The Governor may remove a member without cause subject to approval by a majority of the Senate. Upon a member's resignation or removal from office, the Governor must appoint a successor who, subject to confirmation by the Senate, will serve the remainder of the unfinished term.

A person may not apply to the Governor for appointment to the commission until after a background investigation of the person is conducted by the Department of Law Enforcement and the investigation is forwarded to the Governor.

A person who holds any office in a political party, who has been convicted of a felony, or who has been convicted of a misdemeanor related to gambling within the previous 10 years may not apply to the Governor for appointment.

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, 546, or 849, 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.

Commission Employees

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

The commission's executive director is subject to part III of ch. 110, F.S., relating to the Senior Management Service System, which is a separate system of personnel administration for positions in the executive branch the duties and responsibilities of which are primarily and essentially policymaking or managerial in nature. The Senior Management Service is limited to those positions which are exempt from the Career Service System and for which the salaries and benefits are set by DMS in accordance with the rules of the Senior Management Service.

Attorneys employed by the commission are subject to part V of ch. 110, F.S., relating to the Selected Exempt Service System, which positions include those which are exempt from the Career Service System and the salaries and benefits are set by DMS in accordance with the rules of the Selected Exempt Service. DMS designates all positions included in the Selected Exempt Service as either managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.

For a period of 4 years immediately preceding appointment to, or employment with, the commission, and while appointed or employed with the commission, a person may not:
- Hold a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), a license issued under ch. 551, F.S., (Slot Machines), ch. 546, F.S., (Amusement Facilities) or ch. 849, F.S., (Gambling); be an officer, official, or employee of such permitholder or licensee; or be an ultimate equitable owner, as defined in s. 550.002(37), F.S.,[77] of such permitholder or licensee;

[77] Section 550.002, F.S., defines the term "ultimate equitable owner" to mean "a natural person who, directly or indirectly, owns or controls 5 percent or more of an ownership interest in a corporation, foreign corporation, or alien business organization, regardless of

- 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), of such entity;; or
- Be a registered lobbyist for the executive or legislative branch, except while a commissioner when solely representing the commission.

Persons are ineligible for appointment to or employment with the commission if, within the 4 years immediately preceding such appointment or employment, he or she:

- Has violated the above employment restrictions; or
- Has solicited or accepted employment with, acquired any direct or indirect interest in, or has had 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 division or the commission.

The bill defines "relative" as 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 is ineligible for employment with the commission if:

- the person has been convicted of a felony within 5 years of the date of application;
- convicted of a misdemeanor within 5 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 if he or she intentionally made a false statement concerning a material fact in connection with his or her application 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 of the commission is charged with a misdemeanor while employed by the commission, the commission must suspend the employee, with or without pay, and may terminate employment with the commission upon conviction if the commission determines that the offense for which he or she has been convicted bears a close relationship to the duties and responsibilities of the position held with the commission.

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

Restrictions After Appointment or Employment

For the 6 years immediately following the date of resignation or termination from the commission, and for the 2 years immediately following the date of termination or resignation from employment with the commission, a person may not:

- Hold a permit or license issued under ch. 550, F.S., (Pari-mutuel Wagering), a license issued under ch. 551, F.S., (Slot Machines), ch. 546, F.S., (Amusement Facilities) or ch. 849, F.S., (Gambling);, be an officer, official, or employee of such permitholder or licensee, or be an ultimate equitable owner, as defined in s. 550.002(37), F.S., 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), of such entity; or
- Lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency.

Violations of this provisions 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.

Commission Law Enforcement Officers

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

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

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

Seizure of Contraband

The commission and its law enforcement officers are specifically authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. For purposes of this section, "contraband" has the same meaning as s. 932.701(2)(a)2., which includes, any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.

The commission 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 bill authorizes the commission to adopt rules to implement this provision, and specifies that this provision does not limit the authority of any other person authorized by law to seize contraband.

The bill amends s. 932.701, F.S., the Florida Contraband Forfeiture Act 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. The bill also updates the violations in this section to include violations of ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S. (Gambling).

Commission Powers and Duties

The commission must convene at the call of the chair, or at the request of a majority of its members, and:

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

The presence of three members is required to constitute a quorum, and the affirmative vote of the majority of the members present is required for any action or recommendation by the commission. The commission may meet in any city or county of the state.

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

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

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

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

All rules adopted pursuant to ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch.

849, F.S. (Gambling), prior to the effective date of the act are preserved and remain in full force and effect.

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

Background Screening

The bill provides that prior to serving on the commission or being employed by the commission, a person must submit their fingerprints for a fingerprint-based search by the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of the Investigation (FBI) databases for state and national criminal arrest records. If the person is a foreign national, he or she must also submit any necessary documentation to allow the commission to conduct a criminal history records check in the person's home country.

The bill requires the person to have his or her fingerprints taken by a vendor approved by FDLE[78] and electronically sent to FDLE. The FDLE must forward the set of fingerprints to the FBI. All fingerprints submitted to FDLE, must be retained by FDLE and enrolled in the national retained print arrest notification program at the FBI, effective when FDLE begins participation in the program. The commission must notify FDLE when a person, whose fingerprints have been retained, is no longer a commissioner or employed by the commission.

The bill provides that the commission is responsible for the costs of fingerprint processing, including the costs for retaining the fingerprints.

Annual Report

The bill requires the commission to make an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must, at a minimum, include the following:

- Recent events in the gaming industry, including pending litigation, pending facility license applications, and new and pending rules.
- Actions of the commission relative to the implementation and administration of this law.
- 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.
- A summary of disciplinary actions taken by the department.
- The receipts and disbursements of the gaming commission.
- A summary of actions and investigations taken by the gaming commission.
- Any additional information and recommendations that the commission considers useful or that the Governor, the Speaker of the House or the President of the Senate requests.

The bill requires the commission to annually, prior to the issuance of an operating license, confirm 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 chapter 550, F.S., and that the permit has not been disapproved by voters in an election.

Standards of Conduct

[78] FDLE keeps a list of vendors, who have met FDLE's technical specifications for electronic submission of fingerprints, on their website. FDLE, *Livescan Service Providers*, http://www.fdle.state.fl.us/Criminal-History-Records/Documents/InternetDoc_ServiceProviders.aspx (last visited Apr. 11, 2021).

The bill creates s. 16.715, F.S., to provide standards of conduct and prohibit ex parte communications (i.e., communications from only one party to a proceeding). Commissioners are public officers and employees of the commission 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), but they are also governed by standards of conduct and provisions limiting ex parte communications, as provided in the bill, similar to the standards applicable to commissioners serving on the Public Service Commission. The standards of conduct may be more restrictive than the Code of Ethics but may not be construed to contravene the restrictions of Code of Ethics. In the event of a conflict, the more restrictive provision applies. Many of the prohibitions involve activities with persons regulated by the commission (regulated entity).

A commissioner or 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 along with 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 or employees only, committee members, or speakers, if the commissioner or employee 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 employee, or to attend a meal or event that is generally available to all conference participants without payment of any fees in addition to the conference fee, and that is sponsored, in whole or in part, by a regulated entity.
    - If during the course of an investigation by the Commission on Ethics into an alleged violation, a person is alleged to have given or provided a prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense; and
    - If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the gaming control commission or otherwise represent anyone before that commission for a period of six years.
- May not accept any form of employment with or engage in any business activity with while employed and for 6 years after service as a commissioner or 2 years after employment:
    - 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 accept anything from a party in a proceeding currently pending before the commission.
    - If, during the course of an investigation by the Commission on Ethics into an alleged violation, a person is alleged to have given or provided a prohibited gift, that person must be given notice and an opportunity to participate in the investigation and relevant proceedings to present a defense.
    - If the Commission on Ethics determines that the person gave or provided a prohibited gift, the person may not appear before the gaming control commission or otherwise represent anyone before that commission for a period of two years.
- May not act in an unprofessional manner at any time during the performance of their official duties.
- Must avoid impropriety in all 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.
- Must notify the commission within three calendar days of an arrest for any offense.
- Must provide detailed written notice to the commission and the Commission of Ethics within 30 days of being 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 substantially corresponds to a misdemeanor in this state; or
    - A felony under the laws of this or any other state, the United States, or any other jurisdiction.

A commissioner, employee, or a relative living in the same household as a commissioner or employee while employed and for 6 years after service as a commissioner or 2 years after employment:

- May not have any financial interest, other than shares in a mutual fund, in:
    - Any regulated entity;
    - Any business entity which, either directly or indirectly, owns or controls any regulated entity; or
    - Any business entity which, either directly or indirectly, is an affiliate or subsidiary of any regulated entity.
- Must immediately, if the commissioner, employee, or relative acquires any prohibited financial interest, during the commissioner's term of office or employee's employment with the commission, as a result of events or actions beyond the commissioner's control sell such financial interest.
- Place a wager in any facility licensed by the commission or any facility in the state operated by an Indian tribe.

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.
- 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.
- Personally represent another person or entity for compensation before the commission for a period of six years following commissioner's end of service unless employed by another agency of state government.
- Lobby the Governor or any agency of the state, members or employees of the Legislature, or any county or municipal government or governmental agency except to represent the commission and department in his or her official capacity as a member.

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

The Commission on Ethics must accept and investigate any alleged violations of the above standards of conduct pursuant to the procedures contained in the Code of Ethics as described in ss. 112.322 through 112.3241, F.S., and 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 or an employee of the commission may request an advisory opinion from the Commission on Ethics, pursuant to s. 112.322(3)(a), F.S., regarding the standards of conduct or the prohibitions set forth in ss. 16.71 and 16.715, F.S., created by the bill.

Ex Parte Communications

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

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

The bill prohibits commissioners from initiating or considering ex parte communications concerning the merits, threat, or offer of reward in any proceeding that is currently pending before the commission, or that the commissioner knows or reasonably expects will be filed with the commission within 180 days after the communication. An individual may not discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 180 days. These prohibitions do not apply to commission staff.

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

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

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

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

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

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

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

If the Commission on Ethics finds that there has been a violation of the standards of conduct or prohibitions against ex parte communications by a commissioner, it must provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the

Commission on Ethics, pursuant to the Code of Ethics, and to remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated the standards is subsection. The Governor must remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated the standards of conduct or prohibitions against ex parte communications, after a previous finding by the Commission on Ethics that the commissioner willfully and knowingly violated the standards of conduct or the prohibitions against ex parte communications in a separate matter.

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

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

Seminole Compact Oversight

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

Type Two Transfer

The bill provides for a type two transfer pursuant to s. 20.06(2), F.S., effective July 1, 2022, of all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds of DBPR, relating to the oversight responsibilities by the state compliance agency for authorized gaming compacts under s. 285.710, F.S., the regulation of pari-mutuel wagering under chapter 550, F.S., the regulation of slot machines and slot machine gaming under chapter 551, F.S., and the regulation of cardrooms under s. 849.086, F.S., are transferred by a type two transfer, as defined in s. 20.06(2), F.S., to the Florida Gaming Control Commission within the Department of Legal Affairs, Office of the Attorney General.

The Department of Legal Affairs must provide administrative support to the commission until the transfer is complete, but the commission is not subject to control, supervision, or direction by the Department of Legal Affairs, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters. Those employees transferred from DBPR to the commission retain and transfer accrued leave balances.

Reviser's Bill

The bill directs the Division of Law Revision to prepare a reviser's bill to conform the Florida Statutes to the Type Two transfer.

Effective Date

The bill provides that except as otherwise expressly provided in this act, and except for this section, which shall take effect upon this act becoming a law, this act shall take effect on the same date that

PCB COM 21-05 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 16.56, F.S., relating to the Department of Legal Affairs Office of Statewide Prosecution.

Section 2: Creates s. 16.71, F.S., relating to the Florida Gaming Control Commission.

Section 3: Creates s. 16.17, F.S., relating to Florida Gaming Control Commission background screenings.

Section 4. Creates s. 16.715, F.S., relating to the Florida Gaming Control Commission standards of conduct, ex parte communications.

Section 5: Amends s. 285.710, F.S., compact authorization.

Section 6: Provides for a type two transfer.

Section 7: Provides for the creation of a reviser's bill.

Section 8: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may increase revenues associated with the implementation of additional enforcement measures relating to gambling law violations. The Revenue Estimating Conference has not yet reviewed this bill.

2. Expenditures:

   The bill may increase expenditures associated with the establishment and administration of a new state agency, compensation of its staff, and the implementation of additional enforcement measures relating to gambling law violations. The Revenue Estimating Conference has not yet reviewed this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   To the extent that local law enforcement agencies are incurring costs related to enforcement, including but not limited to, investigation and prosecution, of violations of gambling laws, the bill will have an indeterminate positive fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rules may need to be revised and/or created to implement the changes made by the bill.

The commission and its law enforcement officers are specifically authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. The commission is authorized to adopt rules to implement this provision.

The commission is required to adopt rules to provide for the filing of a report when hearings are held by a single commissioner or a panel.

The bill provides for a type two transfer pursuant to s. 20.06(2), F.S., effective July 1, 2022, of all powers and duties, including administrative rules, of DBPR, relating to the regulation of pari-mutuel wagering, slot machines, and cardrooms, and the state compliance agency's oversight responsibilities for authorized gaming compacts under s. 285.710, F.S., the regulation of pari-mutuel wagering under chapter 550, F.S., the regulation of slot machines and slot machine gaming under chapter 551, F.S., and the regulation of cardrooms under s. 849.086, F.S., to the commission.

The bill provides that all rules adopted pursuant to ch. 24, F.S., (State Lotteries), ch. 285, F.S., (Indian Reservations and Affairs), ch. 546, F.S., (Amusement Facilities), ch. 550, F.S., (Pari-mutuel Wagering), ch. 551, F.S., (Slot Machines), or ch. 849, F.S., (Gambling), prior to the effective date of this act are preserved and remain in full force and effect.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.