HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 21-04 Public Records and Public Meetings Exemptions/Florida Gaming Control Commission
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7078

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee	20 Y, 0 N	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 certain licensed pari-mutuel locations in Miami-Dade County and Broward County, and cardrooms at certain pari-mutuel facilities, penny-ante games, bingo, charitable drawings, game promotions (sweepstakes), and bowling tournaments. The Department of Business and Professional Regulation (DBPR), Division of Pari-Mutuel Wagering (division) regulates pari-mutuel wagering, slot machines, and cardrooms, and the criminal prosecution of illegal gambling is generally referred to the county or local prosecuting authority

PCB COM 21-03, to which this bill is linked, 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) within the Department of Law Enforcement (DLA). The commission will be responsible for regulation of pari-mutuel wagering, slot machines, and cardrooms, and the state compliance agency's oversight responsibilities for authorized gaming compacts via a type two transfer from DBPR. The commission will also be a criminal justice agency.

The bill provides that portions of meetings of the commission during which information made exempt or confidential and exempt is discussed are exempt from Florida public meetings requirements.

The bill provides that recordings of, and any minutes and notes generated during, that portion of a commission meeting which is closed to the public pursuant to this public meetings exemptions, are confidential and exempt from public records requirements until such time as the information discussed is no longer exempt or confidential and exempt.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a).[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no more broad than necessary to accomplish its purpose.[3]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.

Public Meetings

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. It requires all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be noticed and open to the public.

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken to be open to the public at all times. The board or commission must provide reasonable notice of all public meetings.[4] Minutes of a public meeting must be promptly recorded and be open to public inspection.[5]

No resolution, rule, or formal action is considered binding, unless action is taken or made at a public meeting.[6] Acts taken by a board or commission in violation of this requirement are considered void,[7] though a failure to comply with open meeting requirements may be cured by independent final action by the board or commission fully in compliance with public meeting requirements.[8]

Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution.[9] The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.[10]

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[1] Art. I, s. 24(c), FLA. CONST.
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] Art. I, s. 24(c), FLA. CONST.
[4] S. 286.011(1), F.S.
[5] S. 286.011(2), F.S.
[6] S. 286.011(1), F.S.
[7] *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010).
[8] *Finch v. Seminole Cnty. Sch. Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008).
[9] Art. I, s. 24(c), FLA. CONST.
[10] *Id.*

Furthermore, the Open Government Sunset Review Act[11] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[12]

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[13]

Division of Pari-mutuel Wagering

In general, gambling is illegal in Florida.[14] Chapter 849, F.S., prohibits keeping a gambling house,[15] running a lottery,[16] or the manufacture, sale, lease, play, or possession of slot machines.[17] However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[18] wagering at licensed greyhound and horse tracks and jai alai frontons;[19]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[20] and
- Cardrooms[21] at certain pari-mutuel facilities.[22]

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.[23] 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.[24]

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[25] bingo,[26] charitable drawings,[27] game promotions (sweepstakes),[28] and bowling tournaments.[29]

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[11] S. 119.15, F.S.
[12] S. 119.15(6)(b), F.S.
[13] S. 119.15(3), F.S.
[14] S. 849.08, F.S.
[15] S. 849.01, F.S.
[16] S. 849.09, F.S.
[17] S. 849.16, F.S.
[18] "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.
[19] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[20] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.
[21] 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."
[22] 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).
[23] 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.
[24] 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.
[25] S. 849.085, F.S.
[26] S. 849.0931, F.S.
[27] S. 849.0935, F.S.

The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.[30]

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.[31] 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.[32]

Ten permitholders were not issued operating licenses for Fiscal Year 2020-2021: two greyhound permitholders,[33] two jai alai permitholders,[34] one limited thoroughbred permitholder,[35] and five quarter horse permitholders.[36]

PCB COM 21-03

PCB COM 21-03, to which this bill is linked, 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 Department of Legal Affairs (DLA), and the creation of the Florida Gaming Control Commission (commission) within the DLA.

The commission consists of five members, one from each appellate district, to be appointed by the Governor by January 1, 2022, subject to Senate confirmation. Of the five members:

- At least one member must be experienced in law enforcement and criminal investigation.
- At least one member must be a certified public accountant licensed in this state and experienced in accounting and auditing.
- At least one member must be an attorney admitted and authorized to practice law in this state.

The commission must meet 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.

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[28] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[29] S. 849.141, F.S.
[30] S. 546.10, F.S.
[31] *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).
[32] 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).
[33] Jefferson County Kennel Club (Monticello) and North American Racing Association (Key West).
[34] Gadsden Jai-alai (Chattahoochee) and Tampa Jai Alai.
[35] 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.
[36] 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).

- 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.

PCB COM 21-03 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.

PCB COM 21-03 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 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, to the commission.

Effect of the Bill

The bill creates s. 16.71(11), F.S., to require that portions of meetings of the commission during which information made exempt or confidential and exempt[37] is discussed are exempt from s. 286.011, F.S., and s. 24(b), Art I. of the State Constitution (Florida public meetings requirements).

Under the bill:
- The chair of the commission is required to advise the commission at a public meeting that, in connection with the performance of a commission duty, it is necessary that the commission hear or discuss information that is exempt or confidential and exempt.
- The chair's declaration of necessity for closure and the specific reasons for such necessity must be stated in writing in a document that is a public record and must be filed with the official records of the commission.
- The entire closed session must be recorded, and:
    - The recording must include the times of commencement and termination of the closed session, all discussion and proceedings, and the names of all persons present.
    - No portion of the session is allowed to be off the record.
    - Such recording must be maintained by the commission.

Further, only members of the commission, Department of Law Enforcement staff supporting the commission's function, and other persons whose presence is necessary for the presentation of exempt or confidential and exempt information shall be allowed to attend the exempted portions of the commission meetings. The commission shall assure that any closure of its meetings as authorized by this paragraph is limited so that the general policy of this state in favor of public meetings is maintained.

[37] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See WFTV, Inc. v. Sch. Bd. of Seminole, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); City of Rivera Beach v. Barfield, 642 So.2d 1135 (Fla. 4th DCA 1994); Williams v. City of Minneola, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. (1985).

The bill provides that recordings of, and any minutes and notes generated during, that portion of a commission meeting which is closed to the public pursuant to this subsection are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution (Florida public records requirements), until such time as the information discussed is no longer exempt or confidential and exempt.

The bill provides a statement of public necessity as required by the Florida Constitution, which provides the following legislative findings:

- "That it is a public necessity to maintain the exempt or confidential and exempt status of any exempt or confidential and exempt information obtained by the Florida Gaming Control Commission. In the absence of this exemption, sensitive confidential or exempt information would be disclosed. In addition, the Legislature finds that it is a public necessity that portions of meetings of the Florida Gaming Control Commission wherein confidential and exempt information is discussed be made exempt from public meetings requirements. The release of confidential and exempt information via a public meeting defeats the purpose of a public records exemption. Accordingly, the Legislature finds that the harm to the public that would result from the release of such information substantially outweighs any minimal public benefit derived therefrom."
- "That during limited portions of the meetings of the Florida Gaming Control Commission it is necessary that the commission be presented with and discuss details, information, and documents related to active criminal intelligence information or active criminal investigative information. These presentations and discussions are necessary for the commission to make its decisions for licensing of persons for pari-mutuel and gaming activities, and for decisions related to gaming enforcement and enforcement of gambling laws as required by the Legislature under this act. The Legislature finds that to reveal the contents of documents containing active criminal investigative or intelligence information or to allow active criminal investigative or active criminal intelligence matters to be discussed in a meeting open to the public negatively impacts the ability of law enforcement agencies to efficiently continue their investigative or intelligence gathering activities. The Legislature finds that information coming before the commission that pertains to active criminal investigations or intelligence should remain confidential and exempt from public disclosure. The Legislature finds that the Florida Gaming Control Commission may, by declaring only those portions of commission meetings in which active criminal investigative or active criminal intelligence information is to be presented or discussed closed to the public, assure an appropriate balance between the policy of this state that meetings be public and the policy of this state to facilitate efficient law enforcement efforts."

Accordingly, the Legislature finds that the harm to the public that would result from the release of such information substantially outweighs any minimal public benefit derived therefrom.

This section provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemptions by that date.

The bill takes effect on the same date that PCB COM 21-03 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: Creates a public records exemption for certain information and meetings of the Florida Gaming Control Commission in s. 16.71, F.S.

Section 2: Provides a public necessity statement as required by the Florida Constitution.

Section 3: Provides an effective date of the same date that PCB COM 21-03 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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:

   Vote Requirement

   Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

   Public Necessity Statement

   Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public meeting exemption; thus, it includes a public necessity statement.

   Breadth of Exemption

   Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public meeting exemption for portions of meetings of the commission during which information made exempt or confidential and exempt is discussed, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.