

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 487 Gaming
SPONSOR(S): Business & Consumer Affairs Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Consumer Affairs Subcommittee		Rojas	Creamer

SUMMARY ANALYSIS

The bill creates the Department of Gaming Control (DGC) and transfers the Division of Pari-mutuel Wagering from the Department of Business and Professional Regulation to the department by a type two transfer. Specifically related to the DGC the bill provides:

- The DGC is a cabinet agency reporting to the Governor and Cabinet.
- The DGC is the state compliance agency having oversight responsibilities for the Seminole Indian Compact as well as pari-mutuel cardrooms, slot machine gaming, game promotions, and resort gaming.
- DGC employees are subject to specified post employment restrictions.

The bill provides for the issuance and award of destination resort licenses. The DGC may authorize up to three destination resort licenses, which may offer limited gaming in a limited part of the facility. Specifically related to destination resort licenses, the bill:

- establishes criteria for the award of up to three destination resort licenses in Miami-Dade or Broward county;
- establishes requirements for continuing licensure;
- requires licensee must invest a minimum of \$2 billion in the development and construction of the resort and allows no more than 10 percent of the resort's square footage may be used for gaming;
- requires applicants for resort licensees must pay a \$1 million application fee for background investigations plus a one-time fee of \$125 million. Thereafter, licensees must pay an annual license fee of \$5 million. Resort licensees must pay a 10 percent gross receipts tax on gaming revenues. In addition, resort licensees must pay \$250,000 per year for compulsive gambling programming;
- requires that each resort licensee to maintain a surety bond in an amount, determined by the department, equal to the estimated license fees and taxes to become due for the resort;
- provides that persons 21 years of age or older may lawfully participate in gaming at destination resorts;
- allows gaming to be conducted 24 hours per day, 365 days per year; and
- provides that resort licensees may also pay \$250,000 annually for a quota liquor license and may serve alcohol 24 hours per day.
- reduces the tax rate on existing slot machine licensees from 35 percent to 10 percent in the same county once limited gaming commences at a destination resort.

The bill restricts further expansion of gaming by:

- Authorizing the DGC to use the revenues from the initial licensure of destination resorts to buy back up to four existing pari-mutuel permits.
- Prohibiting game promotions that utilize electronic or video displays to reveal the outcome of game promotions and transfers oversight to DGC.
- Revoking pari-mutuel permits if the holder has not conducted a full schedule of live races or games by January 15, 2012.
- Prohibiting the issuance of any new pari-mutuel permit from being issued upon the bill becoming law.

According to the Revenue Estimating Conference, the bill will have an indeterminate positive fiscal impact on state funds.

The bill provides that except as otherwise provided, the effective date of the act is October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Executive Branch Structure

Article IV of the Florida Constitution, limits executive departments to 25 in number, excluding those authorized or created in that document. There are five constitutionally created or authorized departmental entities: State Board of Administration; Department of Veterans' Affairs; Florida Fish & Wildlife Conservation Commission; Department of Elderly Affairs; Board of Governors; and the Parole Commission.

There are 21 departments authorized by statute:

1. Department of State
2. Department of Legal Affairs
3. Department of Financial Services
4. Department of Agriculture and Consumer Services
5. Department of Education
6. Department of Business and Professional Regulation
7. Department of Economic Opportunity
8. Department of Children & Family Services
9. Department of Law Enforcement
10. Department of Revenue
11. Department of Management Services
12. Department of Transportation
13. Department of Highway Safety and Motor Vehicles
14. Department of Environmental Protection
15. Department of Military Affairs
16. Department of Citrus
17. Department of Corrections
18. Department of Juvenile Justice
19. Department of the Lottery
20. Agency for Health Care Administration
21. Department of Health

The Executive Office of the Governor may also be considered the functional equivalent of a department.

In summary, there appears to be 22 state entities that are executive departments.

The Department of Business and Professional Regulation's (DBPR) Division of Pari-Mutuel Wagering

The Division of Pari-Mutuel Wagering (the division) is a program area within the DBPR. From 1932 to 1969, Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within the Department of Business Regulation, and in 1993, the Department of Business Regulation became the Department of Business and Professional Regulation. The purpose of the Division of Pari-Mutuel Wagering is to ensure the health, safety, and welfare of the public, racing animals, and licensees through efficient, and fair regulation of the pari-mutuel industry in Florida in accordance with ch. 550 F.S., ch. 551 F.S., s. 849.086, F.S., and ch. 61D, F.A.C.

The division's primary responsibilities include:

- ensuring races and games are conducted fairly and accurately;
- ensuring the safety and welfare of racing animals;
- collecting state revenue accurately and timely;
- issuing occupational and permit holder operating licenses;
- regulating pari-mutuel, cardroom and slot machine operations;
- ensuring that permit holders, licensees, and businesses related to the industries comply with state law; and
- serving as the State Compliance Agency for the Compact between the Seminole Tribe of Florida and the State of Florida.

The division has issued 50 wagering permits, and 5 non-wagering permits. There are 35 pari-mutuel permit holders currently operating at 29 facilities throughout Florida. Currently, 24 pari-mutuel facilities are operating cardrooms. There are seven pari-mutuel facilities that have been licensed to operate slot machines. Several locations have multiple permits that operate at a single facility. The breakdown by permit type is as follows:

- 16 Greyhound permits
- 3 Thoroughbred permits
- 1 Harness permit
- 2 Quarter Horse permits
- 6 Jai-Alai permits
- 1 track offering limited intertrack wagering and horse sales

The division collects revenue in the form of taxes and fees from permit holders for the conduct of gaming activities outlined above. Additionally, the division is the State Compliance Agency for oversight of the gaming compact with the Seminole Tribe. As part of the division's oversight duties, the division collects and verifies payments by the Seminole Tribe made to the State of Florida under the terms outlined in the Compact.

The division is divided into six functional areas:

- the Director's Office provides general oversight for administrative functions, division budget, spending plans, legislative analysis, and revenue collection;
- the Office of Auditing ensures the integrity of wagering activity by conducting various compliance and financial audits of permit holders;
- the Office of Investigations examines possible rule, statute, or criminal violations. In addition, this office also conducts background and criminal history checks of applicants for occupational licenses;
- the Office of Operations issues operating licenses to permit holders, business occupational licenses, and individual occupational licenses. This office coordinates the collection of specimen samples from racing animals to ensure that prohibited substances are not given;
- the Office of Slot Operations conducts day-to-day inspections at the slot facilities to ensure the integrity of the gaming activity; and
- the Compact Compliance Unit ensures compliance with all provisions outlined in the Seminole Gaming Compact between the Seminole Indian Tribe of Florida and the State of Florida.

The department currently has an interagency agreement with the Department of Revenue for the collection of taxes and fees.

Overview of Florida Gaming Laws and Regulations

In general, gambling is illegal in Florida. Chapter 849, F.S., governs the conduct of gambling in Florida. Section 849.15, F.S., prohibits the manufacture, sale, lease, play, or possession of slot machines. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S. Florida's gambling prohibition includes prohibitions against keeping a gambling house and running a lottery. Section 7, Art. X, of the Florida Constitution, prohibits lotteries, other than pari-mutuel pools authorized by law on the effective date of the Florida Constitution, from being conducted in Florida by private citizens.

Gambling is permitted at licensed pari-mutuel wagering tracks and frontons, by the state operated lottery, which must operate “so as to maximize revenues in a manner consistent with the dignity of the state and the welfare of its citizens,” and by the Seminole Indian Tribe.

Chapter 849, F.S., contains other specific exceptions to the general gambling prohibition and authorizes certain gambling activities, such as cardrooms at pari-mutuel facilities, bingo, penny-ante poker, arcade amusement games, amusement games and machines, and game promotions. In Florida, if the gaming activity is not expressly authorized, then the gambling is illegal. Free-standing, commercial casinos are not authorized in Florida.

Pari-mutuel wagering and Cardrooms

The pari-mutuel industry in Florida is made up of greyhound racing, three different types of horseracing¹, and jai alai. The regulation of the pari-mutuel industry is governed by ch. 550, F.S., and is administered by the Division of Pari-Mutuel Wagering (division) within the Department of Business and Professional Regulation (DBPR). Chapter 550, F.S., provides specific licensing requirements, taxation provisions, and regulations for the conduct of the industry.

Pari-mutuel facilities within the state are allowed to operate poker card rooms under s. 849.086, F.S. No-limit poker games are permitted. The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. Authorized games and cardrooms do not constitute casino gaming operations. Instead, such games are played in a non-banking matter, i.e., the house has no stake in the outcome of the game. Such activity is regulated by the DBPR and must be approved by an ordinance of the county commission where the pari-mutuel facility is located. Each cardroom operator must pay a tax of 10 percent of the cardroom operation’s monthly gross receipts.

Slot Machine Gaming at Pari-mutuel Facilities

Slot machine gaming at licensed pari-mutuels is governed by ch. 551, F.S. Pari-mutuel facilities that operate slot machine gaming are generally known as “racinos.” During the 2004 General Election, the electors approved Amendment 4 to the state constitution, codified as Art. X, s. 23, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward counties upon an affirmative vote of the electors in those counties. In addition to the slot machines authorized under the Florida Constitution. Class III slot machines are also permitted in a charter county or a county that has a referendum approving slots that was approved by law or the Constitution, provided that such facility has conducted live racing for two calendar years preceding its application and complies with other requirements for slot machine licensure. Currently, only existing pari-mutuel facilities in Miami-Dade County qualify for slot machine authorization. There are five pari-mutuels in those counties conducting slot machine gaming.

Slot machine licensees are required to pay a license fee of \$2 million per fiscal year. In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent. If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee must pay to the state, within 45 days after the end of the state fiscal year, a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year that resulted in the revenue shortfall.

Seminole Indian Gaming Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a tribal-state compact under the Indian Gaming Regulatory Act of 1988 that authorizes the Tribe to conduct Class III

¹ Recently DBPR authorized barrel-racing as meeting the criteria for quarter horse racing. That decision is currently being litigated.

gaming at seven tribal facilities throughout the state. The compact was subsequently ratified by the Legislature.

The compact has a 20-year term. It permits the Tribe to offer slot machines, raffles and drawings, and any other new game authorized for any person for any purpose, at all seven of its tribal casinos.

The compact permits the Tribe to conduct banked card games, including blackjack, chemin de fer, and baccarat, but the play of the banked card games is not allowed at the casinos at the Brighton or Big Cypress facilities. If these banked games are authorized for any other person for any other purpose, except if banked card games are authorized by a compact with a qualifying Indian Tribe, the Tribe would be authorized to offer banked cards at all seven of its facilities. The authority for banked card games terminates at the end of five years unless affirmatively extended by the Legislature or the Legislature authorizes any other person to offer banked card games.

In exchange for the Tribe's exclusive right to conduct slot machine gaming outside of Miami-Dade and Broward counties and the exclusive right to offer banked card games at the specified facilities (these grants of authority are known as the "exclusivity provision"), the compact provides for revenue sharing payments by the Tribe to the state as follows:

- During the initial period (first 24 months), the Tribe is required to pay \$12.5 million per month (\$150 million per year).
- After the initial period, the Tribe's guaranteed minimum revenue sharing payment is \$233 million for year three, \$233 million for year four, and \$234 million for year five.
- After the initial period, the Tribe pays the greater of the guaranteed minimum or payments based on a variable percentage of annual net win²⁸ that range from 12 percent of net win up to \$2 billion, to 25 percent of the amount of any net win greater than \$4.5 billion.
- After the first five years, the Tribe will continue to make payments to the state based on the percentage of net win without a guaranteed minimum payment.
- If the Legislature does not extend the authorization for banked card games after the first five years, the net win calculations would exclude the net win from the Tribe's facilities in Broward County.

Revenues are deposited in the General Revenue Fund.

The Compact has a life of 20 years, with the exception of the authorization for banked card games which only lasts five years (until FY 2015-16). The compact is currently in the second year of the initial period.

The compact provides for the expansion of gaming in Miami-Dade and Broward counties under the following limited circumstances:

- If new forms of Class III gaming and casino-style gaming are authorized for the eight licensed pari-mutuels located in Miami-Dade and Broward counties and if 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.
- If new games are authorized at any location in Miami-Dade and Broward counties within the first five years of the Compact, the guaranteed minimum payment would no longer apply to the Tribe's revenue sharing payments and the \$1 billion guarantee would not be in effect. The Tribes payments would be based on the applicable percentage of net win.

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 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.

Game Promotions

Electronic Sweepstakes

Over the past several years, Florida and other states have witnessed a proliferation of electronic sweepstakes. The electronic sweepstakes are offered at establishments offering communications services, such as internet access or telephone calling cards. Often these establishments are promoted using casino themes, and sweepstakes are played using casino-style games.

Game Play

The following outlines game play from a player's perspective:

1. A player purchases Internet access at a point of sale (POS) or a recharge station and receives an account, represented by a card or a number.
2. The player uses the account card or number at a player terminal and sets his or her wagers and begins game play.
3. The terminal displays a game, such as spinning reels, and the resulting outcome.
4. The player returns to the POS to cash out his winnings.

Electronic Sweepstakes System

The electronic sweepstakes system is comprised of a central computer system for managing user accounts and a user computer system, which includes devices that together allow a user to purchase internet access, use the purchased internet access, and reveal assigned sweepstakes entries.

Central System:

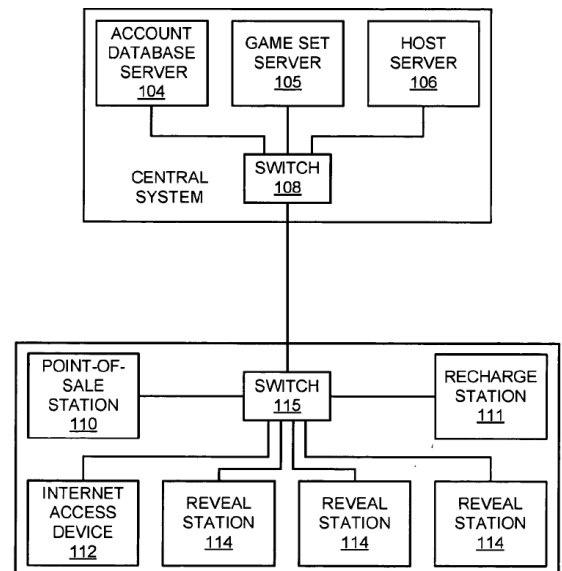
- Stores sweepstakes entries, games and user accounts
- Manages decisions
- Sends game information to User System
- Comprised of three devices:
 - Account database server
 - Game set server
 - Host server

User System:

- Allows users and operators to interact with Central System
- Sends user information to Central System
- Displays game information from Central System to users

Switches handle communication between the two systems. Sweepstakes entries, games and user accounts are stored on the central system. Sweepstakes entries may be revealed in a different order than they are assigned to the account. This feature can be used to set play characteristics, such as win frequency or prize distribution. The following outlines the technical game play:

1. A player purchases internet access at a point of sale (POS) or a recharge station and receives an account, represented by a card or a number.



This diagram, from patent US 20070135209A1, illustrates a sweepstakes system. Each item can be a separate device, or multiple items can be within one device.

2. The central system assigns sweepstakes entries to the user's account based on the amount of internet access purchased. Some of these entries are designated as winning outcomes.
3. The player uses the account card or number at a reveal station and sets his or her wagers and begins game play.
4. The reveal station sends the user's account number to the Central System and requests the chosen game.
5. The Central System selects one or more sweepstakes entries and sends the reveal station a game result, including a prize value, corresponding with the total winning and losing outcomes of the entries. Some systems may determine the prize value, and then select sweepstakes entries to add up to that cumulative value.

Internet Cafés

Electronic sweepstakes are generally offered at retail establishments called 'Internet Cafés'. While most sell internet access, some sell telephone calling cards. Relying on information supplied by the industry, Florida State University's Center for Economic Forecasting and Analysis developed a model of the average Internet Café: it employs about 13 people and generates between \$62,000 and \$400,000 in sales per month.²

Because the majority of Internet Cafés sell internet access, the state receives little or no revenue from the operations. The federal Internet Tax Freedom Act has imposed a moratorium on the taxation of internet access since 1998, and will be effective until 2014, if not renewed by Congress.³ Some operators may be subject to federal taxation and state payroll taxes and corporations operating Internet Cafés may be subject to state corporate income tax.

Legality

Florida courts have not examined whether electronic sweepstakes are legal. Local governments vary in their treatment of the games, and many claim the legality is uncertain.⁴ While no appellate court has examined the legality of the games, prosecutions have had varied results, with jury trials resulting in not guilty verdicts;⁵ numerous plea bargains resulting in guilty or no contest pleas; and at least one dismissal based on a lack of evidence.⁶ Local authorities complain that prosecutions are difficult and costly as they require technical experts and may sometimes require proving that operators knew the games were illegal.

Operators of electronic sweepstakes rely on statutes regulating game promotions and charitable drawings to argue that the games are legal. These statutes predate the technology and do not provide an exception from the prohibition on slot machines.

Slot machines

Slot machines have been generally prohibited in Florida since 1937.⁷ Slot machines are authorized at certain facilities in Broward and Miami-Dade counties by constitutional amendment or statute.⁸

² *Review Internet Cafes Used for Electronic Game Promotions*, Senate Regulated Industries Interim Report 2012-137 (October 2011), discussing *The Economic Impact of Internet Cafes in Florida*, Final Report, Center for Economic Forecasting and Analysis, The Florida State University (May 2011).

³ Pub. L. 105-277, 112 Stat. 2681-719; *last renewed* by Pub. L. 110-108, 121 Stat. 1024-1026.

⁴ *See Local Treatment, infra* at p. 6.

⁵ *State v. Crisante*, 42-2010-CF-001543-BXXX-XX (Marion County).

⁶ *See, e.g., State v. Reed*, 42-2009-CA-004574-AXXX-XX (dismissed); 42-2010-CF-001505-AXXX-XX (nolle prosequi) (Marion County); and *State v. Ames*, 602009CF000951XXAFX (nolle prosequi) (Sumter County).

⁷ Section 849.15, F.S., originally enacted by s. 1, ch. 18143, L.O.F. (1937).

⁸ *See Article X, Section 23, Florida Constitution*; ch. 2010-29, L.O.F. and chapter 551, F.S.

Florida statutes treat any machine as a slot machine or device if, as a result of the insertion of any object, the user, by any element of chance or unpredictability, may receive any thing of value.⁹ The Florida Supreme Court has found that “the element of unpredictability is not supplied because a player may not be sure what score he can accomplish, but that it must be inherent in the machine.”¹⁰

Promoters of electronic sweepstakes argue the games are not slot machines because there is no element of chance inherent in the machine that the player uses. They argue that the games just offer entertaining ways to reveal the sweepstakes’ outcome. Two out-of-state courts have rejected this argument, finding that the whole system amounts to a slot machine. Alabama’s Supreme Court, the first state supreme court to examine the devices, explained,

Today, “most slot machines in casinos are not manually operated.” More and more, such machines are controlled by computer. Indeed, modern slot machines may be “stand-alone or network computers.” Thus, a device is no less a slot machine because it operates within a network, that is, because it shares computer-processing equipment with a number of similar devices.

In this case, the element of chance is satisfied at the point of sale-before the readers are activated-by the same central database and other computer equipment that serve to operate the readers. It is immaterial that the readers do not, themselves, assign values to the entries. In short, the element of chance is as much a feature of the MegaSweeps network system as of a stand-alone slot machine.¹¹

Likewise, a Mississippi appellate court examining the scheme came to the same conclusion, explaining:

The element of chance is considered from the player's point of view; “[w]hat the machine ‘knows’ does not affect the player's gamble.” Additionally, the Barber court concluded that even though the outcome of the sweepstakes entries was predetermined and not impacted by playing games on the electronic readers, the element of chance existed at the point of sale. We see no reason to find differently here. While playing the games at the computer terminals did not impact the outcome of the sweepstakes points, an element of chance still existed because a consumer who purchased a telephone card did not know whether the card contained a winning or losing sweepstakes points. This issue is without merit.¹²

The Florida Attorney General has opined that a precursor to the electronic sweepstakes model, a machine that dispensed 2-minute telephone calling cards with an attached game promotion, was an illegal slot machine.¹³ The machine used a “finite cartridge, which contains 15,000 preshuffled cards, each with its unique personal identification number and winning or losing sweepstakes ticket. When these 15,000 cards are sold the sweepstakes has ended.” The Attorney General opined that “the principal function of the device ... is gambling, that is, the user inserts money and the machine operates to provide the user with a sweepstakes ticket that, *by reason of chance*, may entitle the recipient to a money prize. The incidental receipt of merchandise, in this case a telephone card, will not provide justification or authorization for the ownership, sale, or possession of a machine or device described in section 849.16, Florida Statutes.”

Game Promotions

⁹ Section 849.16, F.S.

¹⁰ *Deeb v. Stoutamire*, 53 So.2d 873, 875 (Fla.1951). See also *State v. Broward Vending*, 696 So.2d 851, 852 (Fla. 4th DCA 1997)(relying on the rationale of *Deeb* to determine certain games were slot machines).

¹¹ *Barber v. Jefferson County Racing Ass'n*, 960 So.2d 599, 609-10 (Ala., 2006).

¹² *Moore v. Mississippi Gaming Com'n*, 64 So.3d 537, 541 (Miss.App., 2011).

¹³ Fla. AGO 98-07; see also Fla. AGO 2008-35, opining that a machine dispensing instant bingo tickets is an illegal slot machine.

Businesses use game promotions as a marketing tool to promote their goods or services. While Florida law generally prohibits gambling and lotteries,¹⁴ game promotions have been regulated by statute since 1971.¹⁵ Before this time, the games were considered illegal lotteries.¹⁶

'Game promotion' is defined by statute as a contest, game of chance, or gift enterprise, conducted within or throughout the state and other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present.

The statute prohibits game promotions from requiring entry fees or proof of purchase to play, having predetermined winners, arbitrarily disqualifying entries, failing to award prizes, and advertising falsely.

If the total value of offered prizes exceeds \$5,000, the operator must:

- File with DACS a copy of the game rules and prizes seven days before the game promotion begins.
- Establish a trust account equal to the total retail value of the prizes.
- File a list of winners of prizes exceeding \$25 within 60 days.

"[T]he DACS is charged with processing and filing documents for game promotions. ... the fact that their filing documents have been reviewed and found complete ... does not mean that the promotion or game is legal and in compliance with the provisions of chapter 849, F.S."¹⁷ The DACS expressly informs each operator that registers a game promotion that it takes no position on the validity, efficacy, advisability, or propriety of the game.¹⁸

Violations of the statute are punishable as second-degree misdemeanors. Persons violating the statute may also be liable for civil fines.

The statute does not apply to activities regulated by the Department of Business and Professional Regulation (DBPR) or bingo. Television or radio broadcasting companies licensed by the Federal Communications Commission are exempt from the statute's reporting requirements. The statute defines 'operator' to exclude charitable nonprofit organizations.

The DACS received its first game promotion filing for an electronic sweepstakes in 2006.¹⁹ Over the next four years, it changed its policy concerning how electronic sweepstakes were registered six times. Originally, a filing was required per game promotion. Midway through 2006, a new policy required a filing per computer terminal. In 2008, a new policy allowed operators to file one package and not file for the remaining terminals. Then, in September 2009, the policy changed again. Operators were to divide the total prizes by the number of terminals. A filing was only required if the per terminal amount was more than \$5,000. By 2010, the policy had changed again, and filings were based on how many computer servers were being used. Since December 2010, the policy has been to require one filing per game promotion. However, what actually constitutes a single game promotion has not been applied in a uniform manner.

Charitable Drawings

Charities use drawings or raffles as a fundraising tool. Organizations suggest a donation, collect entries and randomly select an entry to win a prize.

¹⁴ See ss. 849.08 (gambling) and 849.09, F.S. (lotteries).

¹⁵ Sections 1-9, ch. 71-304, L.O.F.; Section 849.094, F.S.

¹⁶ *Little River Theatre Corp. v. State ex rel. Hodge*, 135 Fla. 854 (1939).

¹⁷ Fla. AGO 2007-48

¹⁸ Miriam Wilkinson & Eric Miller, Florida Game Promotions Statute: A Novel Application of an Exception to Florida's Prohibition on Gambling, 11 Gaming Law Rev 98, 98-99 (2007).

¹⁹ *Id.* at 100.

While Florida law prohibits lotteries,²⁰ an exemption is provided for qualified organizations to conduct drawings by chance, provided the organization has complied with all applicable provisions of ch. 496, F.S. Requiring a donation or any other consideration is prohibited.

'Drawing by chance' or 'drawing' is defined as an enterprise in which, from the entries submitted by the public to the organization conducting the drawing, one or more entries are selected by chance to win a prize. The statute excludes from the definition "those enterprises, commonly known as 'matching,' 'instant winner,' or 'preselected sweepstakes,' which involve the distribution of winning numbers, previously designated as such, to the public."

'Organization' is defined as "an organization which is exempt from federal income taxation pursuant to 26 U.S.C. s. 501(c)(3), (4), (7), (8), (10), or (19), and which has a current determination letter from the Internal Revenue Service, and its bona fide members or officers."

Violations of the statute are punishable as second-degree misdemeanors and deceptive and unfair trade practices.

Because the game promotion statute excludes charitable nonprofit organizations, such organizations offering electronic game promotions sometimes claim to operate under the charitable drawings exemption. However, as noted, the charitable drawing statute seems to limit drawings to those conducted after the collection of entries, rather than a sweepstakes, where the winning ticket is determined before distribution.

Local Treatment

Local governments throughout the state have approached electronic sweepstakes in the following ways: enforcement based on state law,²¹ prohibition by local ordinance,²² regulation by local ordinance,²³ zoning restrictions,²⁴ and moratoriums.²⁵

During the 2011 interim, staff of the Senate Regulated Industries Committee conducted a survey of local authorities.

The majority of the Sheriffs who responded to the survey indicated that they thought the statutes were either vague, insufficient, or failed to provide sufficient direction as to whether the activities conducted through the use of electronic game promotions were legal. The majority of State Attorneys who responded to the survey believe that the Internet Cafes are illegal gambling houses and the activities should be prohibited. As discussed above, a few State Attorneys stated that it was difficult to believe that customers were paying for Internet time and noted that very few people use the Internet time; instead, the State Attorneys responding to the survey believe the customers are using slot machines to gamble. In addition, the majority of the Chiefs of Police who responded to the survey believe the statutes are vague, the establishments are operating as illegal gambling establishments, and that they should be prohibited. Law enforcement also indicated that the ambiguities in the laws make it difficult to determine whether the facilities are operating permissibly or in violation of state law. Over 20 cities

²⁰ Section 849.09, F.S.

²¹ See, e.g., Anthony Miller, Deputies raid internet cafes, My Fox Tampa Bay, July 15, 2011, *available at* http://www.myfoxtampabay.com/dpp/news/local/nature_coast/deputies-raid-internet-cafes-07152011; Jeff Butera, Raids for illegal gambling shut down three internet sweepstakes cafes in Pinellas County, ABC Action News, July 15, 2011, *available at* http://www.abcactionnews.com/dpp/news/region_pinellas/raids-for-illegal-gambling-shut-down-three-internet-sweepstakes-cafes-in-pinellas-county

²² Seminole County Ordinance 2011-1, *available at* http://www.seminolecountyfl.gov/ca/pdf/Ordinance_2011-1.pdf.

²³ Duval County Ordinance 2010-326, *available at* <http://www.coj.net/NR/rdonlyres/ecnqya2zuril2tmbesnmsnc7j7rkqwe7koe5wr4ok5mfrz5ypj6bjzsh7hs27kiomyjl4ivoqmm2d3ldy1bhwdt3gc/2010-326.doc>

²⁴ Volusia County Ordinance 2011-06, on file with Business & Consumer Affairs Subcommittee. Pat Hatfield, "Volusia County looks to zoning to limit sweepstakes operators," West Volusia Beacon (March 14, 2011), *available at* <http://www.beacononlinenews.com/news/daily/3592>

²⁵ Jerry Askin, Internet Cafe in Chattahoochee Forced to Shut Down, WCTV, July 8, 2011, *available at* http://www.wctv.tv/news/headlines/Internet_Cafe_in_Chattahoochee_Forced_to_Close_Its_Doors_125177944.html?ref=944.

reported that they have an ordinance to prohibit or regulate the businesses, have passed a moratorium to study the issue, or are considering the passage of an ordinance or moratorium.²⁶

Alcoholic Beverages and Tobacco

DBPR's Division of Alcoholic Beverages and Tobacco licenses the alcoholic beverage and tobacco industries, collects and audits taxes and fees paid by the licensees, and enforces the laws and regulation of the alcoholic beverage and tobacco industries, pursuant to chs. 210, 561-565 and 567-569, F.S. Florida has approximately 72,000 active alcoholic beverage and tobacco license holders. The division generates over \$1.98 billion in license fees, taxes, fines, etc. With 334.75 employees, these responsibilities are carried out through three bureaus within the division: Licensing, Auditing and Enforcement.

Under ch. 561, F.S., the revenues from alcoholic beverage license "fees" are shared with cities and counties where the license is located.

Chapter 561, F.S., prohibits alcoholic beverage vendors from purchasing or acquiring in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law, depending on their license type.

Proposed Changes

Regulatory Structure

The bill creates a Department of Gaming Control (DGC) and transfers and reassigns, through the use of a type two transfer as defined in Section 20.06(2), F.S., all statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of Chapter 550, F.S., Chapter 551, F.S., and Section 849.086, F.S., except for those under the Office of the General Counsel from the Division of Pari-Mutuel Wagering within DBPR to DGC. The Pari-Mutuel Wagering Trust Fund is transferred from the DBPR to the DGC.

The bill specifies the general powers and duties of the DGC, including the authority to adopt rules to implement its statutory duties.

The bill also sets forth employment criteria that:

- Precludes the department from employing persons who, during the three years immediately preceding employment, held a direct or indirect interest in, or were employed by a gaming entity.
- Precludes department employees from placing wagers on any game conducted by a licensee.
- Restricts department employees from being employed by a licensee for a period of three years after departing from the DGC.

Destination Resort Licenses

The bill establishes time frames for the issuance and award of destination resort licenses. The DGC may authorize up to three resort licenses in Miami-Dade or Broward county, which may offer limited gaming in a limited part of the resort facility.

The bill establishes criteria for the award of destination resort licenses, requirements for continuing licensure, and pre-empts regulation of destination resorts to the state. Each licensee must invest a minimum of \$2 billion in the development and construction of the resort, which may not include costs for leased gaming machines, real estate or impact fees. No more than 10 percent of the resort's square footage may be used for gaming. Applicants for resort licensees must pay a \$1 million application fee for background investigations plus a one-time fee of \$125 million dollars. Thereafter, licensees must

²⁶ *Review Internet Cafes Used for Electronic Game Promotions*, Senate Regulated Industries Interim Report 2012-137 (October 2011).

pay an annual license fee of \$5 million. Resort licensees must pay a 10 percent gross receipts tax on gaming revenues.

The bill provides that each resort licensee must maintain a surety bond in an amount determined by the DCG that must be set at the total amount of estimated license fees and taxes to become due for the resort.

The bill provides that persons 21 years of age or older may lawfully participate in gaming at destination resorts. Gaming may be conducted 24 hours per day, 365 days per year. Resort licenses may also pay \$250,000 annually for a quota liquor license and may serve alcohol 24 hours per day.

The bill reduces the tax rate on existing slot machine licensees within the same county as an authorized destination resort from 35 percent to 10 percent once limited gaming commences at a destination resort. The bill also increases the minimum payout percentage from 85 percent to 90 percent when the new tax rate takes effect.

Statutory Limitations on other Gaming

The bill seeks to restrict further expansion of gaming in a number of different ways.

Pari-mutuel permit buyback

The bill authorizes the DCG to use the revenues from destination resorts to buy back up to four existing pari-mutuel permits. Specifically, the DCG can use up to \$80 million of the application fees paid for the initial licensure of a destination resort for the purchase of up to four pari-mutuel permits issued under ch. 550, F.S. Preference is given to facilities with the lowest total gross revenue and purchase price will be the lesser of \$20 million or the appraised value at the time of the request for proposals to purchase.

All unexpended funds received under and deposited into the Destination Resort Trust Fund will be transferred to the General Revenue Fund no later than 12 months after an application for a destination resort is approved. The DCG must complete the buyback program on or before December 31, 2018

Revocation of dormant pari-mutuel permits and prohibition on future permits

Currently, there are 17 dormant or pending pari-mutuel permits. Once issued, DBPR has very little authority to revoke a pari-mutuel permit. In some instances, permitholders have dismantled their facility and not conducted wagering in decades, but have maintained the same rights as active permitholders. When these permits were first issued, the permitholder was required to build 50 percent of its facility within 12 months or the permit was revoked. However, once it did so, there was no requirement to maintain the facility or to continue to operate.

Unlike permits issued for other pari-mutuel activities, permits for quarter horse racing are not revoked if the permitholder does not complete construction within a set time period. A quarter horse permitholder is not required to actually open a facility to maintain their permit.

The bill authorizes the DCG to revoke pari-mutuel permits if the holder has not conducted a full schedule of live races or games before January 15, 2012, and prohibits any new pari-mutuel permit from being issued once the bill becomes law.

Prohibition of game promotions that utilize electronic or video displays

The bill clarifies current laws concerning charitable drawings, game promotions and slot machines.

As to slot machines, the bill:

- specifically prohibits the use of operator-provided electronic or mechanical devices in relation to participation in charitable drawings and game promotions;

- updates the definition of slot machine to specifically include systems or networks of devices and to remove technologically obsolete criteria; and
- provides a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prize are prohibited slot machines.

As to charitable drawings, the bill clarifies the definition of a charitable drawing and specifically provides that compliance with the charitable drawing statute does not provide an exemption from other gambling prohibitions.

As to game promotions, the bill:

- clarifies the definition of a game promotion;
- clarifies that nonprofit organizations may not conduct game promotions;
- specifically provides that compliance with the game promotion statute provides an exemption from the lottery prohibition, but does not provide an exemption from other gambling prohibitions.
- transfers oversight of game promotions to DGC.

B. SECTION DIRECTORY:

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| Section 1 | Amends s. 20.165, F.S.; deleting the Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation. |
| Section 2 | Creates s. 20.318, F.S.; establishing the Department of Gaming Control. |
| Section 3 | Amending s. 120.80, F.S.; deleting certain exceptions and special requirements regarding hearings applicable to the Department of Business and Professional Regulation; creating certain exceptions and special requirements regarding hearings within the Department of Gaming Control. |
| Section 4 | Provides for statutory construction. |
| Section 5 | Creates s. 551.201, F.S.; providing a short title. |
| Section 6 | Creates s. 551.202, F.S.; providing definitions. |
| Section 7 | Creates s. 551.204, F.S.; specifying the powers and duties of the department. |
| Section 8 | Creates s. 551.205, F.S.; authorizing the department to adopt rules. |
| Section 9 | Creates s. 551.206, F.S.; preempting the regulation of limited gaming at a destination resort to the state. |
| Section 10 | Creates s. 551.207, F.S.; restricting the award of resort licenses by the department; providing requirements for a referendum. |
| Section 11 | Creates s. 551.208, F.S.; authorizing the department to issue a request for proposals to award a resort license; providing criteria, procedures, and deadlines. |
| Section 12 | Creates s. 551.209, F.S.; specifying the criteria for evaluation of applications and award of a destination resort license. |
| Section 13 | Creates s. 551.210, F.S.; providing for applications for a destination resort license; specifying the information that must be on or included with an application for a resort license. |
| Section 14 | Creates s. 551.211, F.S.; authorizing the department to use certain funds to purchase certain pari-mutuel permits. |

- Section 15 Creates s. 551.212, F.S.; exempting an institutional investor that is a qualifier for a resort licensee from certain application requirements under certain circumstances.
- Section 16 Creates s. 551.213, F.S.; exempting lending institutions and underwriters from licensing requirements as a qualifier under certain circumstances.
- Section 17 Creates s. 551.214, F.S.; specifying conditions for a resort licensee to maintain licensure.
- Section 18 Creates s. 551.215, F.S.; requiring that the licensee post a bond.
- Section 19 Creates s. 551.216, F.S.; specifying conditions for the conduct of limited gaming by a resort licensee; providing hours and days of operation and the setting of minimum and maximum wagers.
- Section 20 Creates s. 551.218, F.S.; specifying an annual fee for the renewal of a resort license; imposing gross receipts tax; requiring a surcharge if specified revenues decrease; providing for a proportionate share to be paid by each destination resort licensee; providing for the disposition of funds collected.
- Section 21 Creates s. 551.219, F.S.; providing procedures for the submission and processing of fingerprints.
- Section 22 Creates s. 551.221, F.S.; requiring a person to have a supplier license to furnish certain goods and services to a resort licensee.
- Section 23 Creates s. 551.222, F.S.; requiring a person to have an occupational license to serve as a limited gaming employee of a resort licensee.
- Section 24 Creates s. 551.223, F.S.; authorizing the executive director of the department to issue a temporary occupational or temporary supplier license under certain circumstances.
- Section 25 Creates s. 551.225, F.S.; requiring the department to file quarterly reports with the Governor and cabinet.
- Section 26 Creates s. 551.227, F.S.; providing procedures for the resolution of certain disputes between a resort licensee and a patron.
- Section 27 Creates s. 551.228, F.S.; providing for the enforcement of credit instruments.
- Section 28 Creates s. 551.230, F.S.; requiring a resort licensee to train its employees about compulsive gambling; providing for the department's compulsive gambling prevention program to be funded from a regulatory fee imposed on resort licensees.
- Section 29 Creates s. 551.231, F.S.; authorizing a person to request that the department exclude him or her from limited gaming facilities.
- Section 30 Amends s. 561.20, F.S.; exempting destination resorts from certain limitations on the number of licenses to sell alcoholic beverages which may be issued.
- Section 31 Amends s. 849.15, F.S.; authorizing slot machine gaming in a resort licensee and the transportation of slot machines pursuant to federal law.
- Section 32 amending s. 849.231, F.S.; providing that a prohibition on gambling devices does not apply to resort licensees as authorized under specified provisions.

- Section 33 Transfers and reassigns certain functions and responsibilities, including records, personnel, property, and unexpended balances of appropriations, trust funds and other resources from the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation to the Department of Gaming Control.
- Section 34 Amends s. 285.710, F.S. to correct cross-references.
- Section 35 Amends s. 550.002, F.S. to correct cross-references.
- Section 36 Amends s. 550.0251, F.S. to correct cross-references.
- Section 37 Amends s. 550.054, F.S.; removing a provision relating to failure to complete construction of a pari-mutuel facility; directing the department to revoke a pari-mutuel permit if the permit holder has not conducted a full schedule of live racing or games before a certain date.
- Section 38 Amends s. 550.09514, F.S. to correct cross-references.
- Section 39 Amends s. 550.135, F.S. to correct cross-references.
- Section 40 Amends s. 550.24055, F.S. to correct cross-references.
- Section 41 Amends s. 550.2415, F.S. to correct cross-references.
- Section 42 Amends s. 550.2625, F.S. to correct cross-references.
- Section 43 Amends s. 550.2704, F.S. to correct cross-references.
- Section 44 Amends s. 550.3345, F.S. to correct cross-references.
- Section 45 Amends s. 550.6305, F.S. to correct cross-references.
- Section 46 Amends s. 550.902, F.S. to correct cross-references.
- Section 47 Amends s. 550.907, F.S. to correct cross-references.
- Section 48 Amends s. 551.101, F.S. to correct cross-references.
- Section 49 Amends s. 551.102, F.S. to correct cross-references.
- Section 50 Amends s. 551.103, F.S. to correct cross-references; and amends slot machine pay percentage under certain circumstances.
- Section 51 Amends s. 551.104, F.S. to correct cross-references.
- Section 52 Amends s. 551.106, F.S. revising tax rate on slot machine revenue under certain circumstances.
- Section 53 Amends s. 551.107, F.S. to correct cross-references.
- Section 54 Amends s. 551.108, F.S. to correct cross-references.
- Section 55 Amends s. 551.109, F.S. to correct cross-references.
- Section 56 Amends s. 551.111, F.S. to correct cross-references.
- Section 57 Amends s. 551.112, F.S. to correct cross-references.

- Section 58 Amends s. 551.117, F.S. to correct cross-references.
- Section 59 Amends s. 551.119, F.S. to correct cross-references.
- Section 60 Amends s. 551.122, F.S. to correct cross-references.
- Section 61 Amends s. 551.123, F.S. to correct cross-references.
- Section 62 Amends s. 565.02, F.S. to correct cross-references.
- Section 63 Amends s. 817.37, F.S. to correct cross-references.
- Section 64 Amends s. 849.086, F.S. to correct cross-references.
- Section 65 Creates the "Electronic Gambling Prohibition and Community Protection Act".
- Section 66 Provides legislative findings and intent.
- Section 67 Transfers authority over game promotions from the Department of Agriculture and Consumer Services to the Department of Business and Professional Regulation.
- Section 68 Amends s. 849.0935, F.S., relating to drawings by chance offered by nonprofit organizations to revise definitions and conditions for exceptions to prohibitions on lotteries and to prohibit the use of devices operated by drawing entrants and provide penalties.
- Section 69 Amends s. 849.094, F.S., to revise definitions; provide conditions for exceptions to prohibitions on lotteries; prohibit the use of devices operated by game promotion entrants; limit the rulemaking authority of the Department of Business and Professional Regulation; provide penalties; and provide that violations are deceptive and unfair trade practices.
- Section 70 Amends s. 849.16, F.S.; to revise definition machines or devices are subject to gambling provisions and provide a rebuttable presumption that a machine is a prohibited slot machine.
- Section 71 Amends s. 895.02, F.S.; to revise the definition of the term "racketeering activity" to include violations of specified provisions.
- Section 72 Amends s. 721.111, F.S., relating to promotional offers to conform cross-references.
- Section 73, 75, 77, 78 Reenact s. 16.56(1)(a), 655.50(3)(g), 896.101(2)(g), and 905.34(3), F.S., relating to the Office of Statewide Prosecution, money laundering, the Florida Money Laundering Act, and a statewide grand jury, respectively, to incorporate changes made by the act in references
- Section 74, 76 Reenact s. 338.234(1), 849.19, F.S., relating to the Florida Turnpike and the seizure of property, respectively, to incorporate changes made by the act in references.
- Section 79 Clarifies that nothing in sections 63-76 of the bill authorize the possession or operation of any machine or device prohibited under any other provision of law.
- Section 80 Provides a severability clause.
- Section 81 Provides an effective date of October 1, 2012 except as otherwise expressly provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
Indeterminate.
2. Expenditures:
Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
Indeterminate.
2. Expenditures:
Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not applicable. The bill does not appear to affect county or municipal government.
2. Other:
None.

B. RULE-MAKING AUTHORITY:

Authorizes DCG to enact rules for the implementation and oversight of limited gaming at destination resorts.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES