

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RAC 16-02 Gaming
SPONSOR(S): Regulatory Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Affairs Committee	12 Y, 6 N	Butler	Hamon

SUMMARY ANALYSIS

The bill ratifies and approves the Gaming Compact between the Tribe and the State of Florida, which was executed by Governor Rick Scott and the Tribe on December 7, 2015 (the 2015 Compact). The 2015 Compact permits the Tribe to offer the banked card games (such as blackjack), slot machines, raffles and drawings, live table games (such as craps and roulette), and any other game authorized in Florida. In exchange, the Tribe will make revenue sharing payments totaling at least \$3 billion to the State during the first 7 years of the Compact. The Tribe may stop or reduce revenue sharing payments if the state authorizes specified gaming in violation of the Tribe's exclusivity rights as set forth in the 2015 Compact.

The bill makes amendments to the pari-mutuel wagering, slot machines, and gambling chapters of the Florida Statutes, including:

- Permitting greyhound, harness, quarterhorse, and certain thoroughbred permitholders to conduct pari-mutuel wagering, cardrooms, and slots without the requirement of live races;
- Providing for the revocation of dormant permit, under certain conditions;
- Providing for a new limited slot machine permitholder to be selected pursuant to specified criteria that shall be prohibited from operating live racing or games;
- Prohibiting the issuance of new or additional permits, and prohibiting the conversion of permits;
- Prohibiting the transfer or relocation of most pari-mutuel permits or licenses;
- Prohibiting the issuance of additional summer jai alai permits;
- Removing tax credits for greyhound permitholders and revising the tax on handle for live greyhound racing and intertrack wagering from 5.5% to 1.28%;
- Authorizing video race terminals at certain facilities;
- Removing provisions that allow for reissuance of permits after they escheat to the state;
- Repealing tax credits for unclaimed greyhound racing wagers;
- Revising the requirements for a greyhound permitholder to provide a greyhound adoption booth at its facility and requiring sterilization of greyhounds before adoption;
- Requiring injuries to racing greyhounds be reported;
- Extending weekday hours of operation for all slot machine and cardroom licensees from 18 to 24 hours;
- Streamlining the slot machines chapter and limiting the issuance of slot machine licenses;
- Providing that slot machine gaming may be performed in a certain county at a licensed facility, that may be located outside of Miami-Dade or Broward counties;
- Providing that complimentary or reduced-cost alcoholic beverages may be served to persons playing slot machines;
- Providing that an automated teller machine may be located within the designated slot machine gaming areas of a slot machine licensees' facility;
- Providing for the relinquishment of permits in order to obtain a limited slot license.

The bill is expected to have a fiscal impact on state funds; however a fiscal analysis is unavailable at this time.

The bill provides for an effective date upon coming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

General Overview of Gaming in Florida

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 Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,⁵ bingo,⁶ cardrooms,⁷ charitable drawings,⁸ game promotions (sweepstakes),⁹ and bowling tournaments.¹⁰

In 2013, the Legislature clarified that Internet café style gambling machines were illegal in the state. The legislation clarified existing sections of law regarding slot machines, charitable drawings, game promotions, and amusement machines and created a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prize are prohibited slot machines.¹¹

In 2015, the Legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida law and prevent the expansion of casino-style gambling. The Legislature clarified the operation and use of amusement games or machines to ensure that regulations would not be interpreted as creating an exception to the state's general prohibitions against gambling.¹²

Lotteries

Lotteries are prohibited by the Florida Constitution.¹³ The constitutional prohibition is codified in statute at s. 849.09, F.S. Other than the statement in the Florida Constitution that indicates that the term "lottery" does not include "types of pari-mutuel pools authorized by law as of the effective date of this constitution," the term "lottery" is not defined by the Florida Constitution or statute. Generally, a lottery is a scheme which contains three elements: consideration, chance, and prize. As to consideration, while most states view consideration narrowly as a tangible asset, such as money, Florida views consideration broadly, as the conferring of any benefit.¹⁴ Thus, even if players do not pay to participate in a game where they have a chance to win a prize, it may be an illegal lottery.

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. This lottery is known as the Florida Education Lotteries and directs proceeds to the State Education Lotteries Trust Fund.

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

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 s. 849.085, F.S.

⁶ s. 849.0931, F.S.

⁷ s. 849.086, F.S.

⁸ s. 849.0935, F.S.

⁹ s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

¹⁰ s. 546.10, F.S.

¹¹ Florida House of Representatives Select Committee on Gaming, Final Bill Analysis of 2013 CS/HB 155, p. 1 (Apr. 19, 2013).

¹² s. 546.10, F.S.

¹³ Article X, s. 7, Fla. Const. *But, see*, Article X, s. 15, Fla. Const., authorizing lotteries operated by the state.

¹⁴ *Little River Theatre Corp. v. State ex rel. Hodge*, 135 Fla. 854 (1939).

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 ch. 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.¹⁵

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."¹⁶

Section 15 of Article X of the State Constitution (adopted by the electors in 1986) provides for state operated lotteries:

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.¹⁷

Slot Machines

Slot machines have been generally prohibited in Florida since 1937.¹⁸ Section 849.16, F.S., defines a slot machine as a machine or device that requires the insertion of a piece of money, coin, account number, code, or other object or information to operate and allows the user, whether by application of skill or by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, to receive money, credit, allowance, or thing of value, or secure additional chances or rights to use such machine, apparatus, or device. Slot machines are authorized at certain facilities in Broward and Miami-Dade counties by constitutional amendment or statute and are regulated under ch. 551, F.S.¹⁹ Except for the Seminole casinos authorized in the gaming compact with the Seminole Tribe of Florida (the "2010 Compact"), free-standing, commercial casinos are not authorized, and gaming activity, other than what is expressly authorized, is illegal.

Section 23 of Article X of the State Constitution (adopted by the electors in 2004) provides for slot machines in Miami-Dade and Broward Counties:

After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed pari-mutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such pari-mutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

Pari-mutuel Wagering

¹⁵ *Little River Theatre Corp.*, *supra* at 868.

¹⁶ 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.

¹⁷ The Department of the Lottery is authorized by s. 15, Art. X, 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.

¹⁸ s. 849.15, F.S., originally enacted by s. 1, ch. 18143, L.O.F. (1937).

¹⁹ See Article X, Section 23, Florida Constitution; ch. 2010-29, L.O.F. and chapter 551, F.S.

The Division of Pari-mutuel Wagering (Division) within the Department of Business and Professional Regulation (DBPR) regulates and oversees pari-mutuel facilities in Florida. Its purpose 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.²⁰ The Division collects revenue in the form of taxes and fees from permitholders for the conduct of gaming.

Chapter 550, F.S., authorizes pari-mutuel wagering at licensed tracks and frontons and provides for state regulation. Pari-mutuel is defined 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."²¹

Chapter 551, F.S., authorizes slot machine gaming at the location of certain licensed pari-mutuel locations in Miami-Dade County or Broward County and provides for state regulation. Chapter 849, F.S., authorizes cardrooms at certain pari-mutuel facilities.²² 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.²³

The Division currently makes an annual report to the Governor showing its actions, money received under Chapter 550, F. S., the practical effects of Chapter 550, and any suggestions for more effective accomplishment of the goals of the chapter.²⁴

Current Situation: Seminole Gaming Compact

Indian Gaming in Florida

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."²⁵ 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.²⁶

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."²⁷ Class I games are within the exclusive jurisdiction of the Indian tribes.²⁸
- Class II games are bingo and card games that are explicitly authorized or are not explicitly prohibited by the laws of the State.²⁹ 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

²⁰ From 1932 to 1969, Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within DBPR, and, in 1993, the Department of Business Regulation became the DBPR.

²¹ s. 550.002(22), F.S.

²² 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 charges a fee for participation by the operator of such facility.

²³ 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."

²⁴ s. 550.0251(1), F.S.

²⁵ United States Senate Report No. 100-446, Aug. 3, 1988.

²⁶ *Id.*

²⁷ 25 U.S.C. 2703(6).

²⁸ 25 U.S.C. 2710(a)(1).

²⁹ 25 U.S.C. 2703(7)(A).

fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.”³⁰ Class II games are also within the jurisdiction of the Indian tribes, but are also subject to the provisions of IGRA.³¹

- Class III games are defined as any games that are not Class I or Class II. Class III games include slot machine and banked card games such as blackjack, baccarat and chemin de fir.³²

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.³³
- 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.³⁴ 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, however, the court may order negotiation, then 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.”³⁵

Generally, in accordance with IRGA 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.³⁶

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.³⁷ Upon receipt of a proposed compact, the Secretary has 45 days to approve or disapprove the compact.³⁸ 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,

³⁰ 25 U.S.C. 2703(7)(B).

³¹ 25 U.S.C. 2710(a)(2) and (b).

³² 25 U.S.C. 2703 and 25 C.F.R. § 502.4.

³³ 25 U.S.C. 2710(d)(1).

³⁴ 25 U.S.C. 2710 (d)(3)(A).

³⁵ 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 enforce the provisions of IGRA against a state. The Department of Interior adopted rules to provide a remedy for the tribes. The validity of the rules were also brought into question in *Texas v. United States*, 497 F.3d 491, (5th Cir. 2007).

³⁶ 25 U.S.C. 2710 (d)(3)(C).

³⁷ 25 U.S.C. 2710(d)(3)(B).

³⁸ 25 U.S.C. 2710(d)(8)(C).

cannot be put “into effect”, even if the Secretary of the Interior publishes the compact in the Federal Register.³⁹

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

[N]othing 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.⁴⁰

Notwithstanding this restriction, revenue sharing has been permitted when the State has provided a valuable economic benefit to, usually in the form of substantial exclusivity in game offerings or geographic monopoly or a right to conduct such offerings on more favorable terms than non-Indians.⁴¹

The 2010 Compact

Chapter 285, F.S., ratified the 2010 Compact. It provides that it is not a crime for a person to participate in raffles, drawings, slot machine gaming, or banked card games (e.g., blackjack or baccarat) at a tribal facility operating under the compact.⁴² The 2010 Compact provides for revenue sharing. For the exclusive authority to offer banked card games on tribal lands at five locations and to offer slot machine gaming outside Miami-Dade and Broward Counties, the Seminole Tribe pays the State of Florida a share of “net win” (approximately \$240 million per year). Section 285.710(1)(f), F.S., designates the Division within DBPR as the “state compliance agency” having authority to carry out the state’s oversight responsibilities under the 2010 Compact. The 2010 Compact took effect when published in the Federal Register on July 6, 2010 and lasts for 20 years, expiring July 31, 2030, unless renewed. The 2010 Compact required the Seminole Tribe to share revenue with the state in the amount of \$1 billion over five years.

The 2010 Compact provides consequences for the expansion of gaming in Miami-Dade and Broward counties:

- 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.⁴³

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.

The 2015 Compact

³⁹ See *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546, (10th Cir. 1997), cert. denied, 522 U.S. 807 (1997).

⁴⁰ 25 U.S.C. 2710(d)(4).

⁴¹ 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 Interior, to Cyrus Schindler, President of the Seneca Nation of Indians, dated November 12, 2002.

⁴² s. 285.710, F.S.

⁴³ The Tribe would automatically be authorized to conduct the same games authorized for any other person at any location.

A new compact was executed by the Governor and the Tribe on December 7, 2015 (the "2015 Compact"), but must be ratified by the Legislature and approved by the United States Secretary of the Interior to become effective. If the 2015 Compact is ratified and approved, the 2010 Compact will be nullified, and the provisions of the 2015 Compact will provide the Tribe exclusivity to operate certain games, with certain exceptions. The 2015 Compact will provide the Tribe exclusivity to operate certain games, with certain exceptions. In exchange, the Tribe will share revenue with the state with a Guaranteed Minimum Compact Term Payment of \$3 billion over 7 years.

The 2015 Compact differs from the 2010 Compact in several key ways. The table below outlines the specific provisions that differ between the two compacts:

	2015 Compact	2010 Compact
Revenue Sharing	Revenue sharing, providing for minimum guaranteed payments by the Seminole Tribe to the State of \$3 billion dollars over seven years.	Revenue sharing, providing for minimum guaranteed payments of \$1 billion dollars over the first five years. (The minimum guaranteed payments ended on July 1, 2015)
Class III Gaming Authorizations	All seven Seminole Casinos may offer slot machines, banked card games, raffles and drawings, live table games, and any new game authorized in Florida.	All seven Seminole Casinos may offer slot machines, raffles and drawings, and any new game authorized in Florida. Banked card games may be offered at five of the Seminole Casinos (excluding the Brighton and Big Cypress facilities).
Banked Card Game Exclusivity	No facility in Florida may offer banked or banking card games or live table games, except for certain facilities in Miami-Dade and Broward Counties which may offer blackjack under certain circumstances. ⁴⁴	No facility in Florida may offer banked card games.
Slot Machine Exclusivity	No facility except for specifically authorized facilities in Miami-Dade, Broward, or Palm Beach County may offer slot machines. ⁴⁵	No facility except for specifically authorized PMW facilities in Miami-Dade or Broward County may offer slot machines.
Compulsive Gambling Exclusivity Payment	Tribe will make annual \$1,750,000 donation to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list, so long as exclusivity is maintained.	Tribe will make annual \$250,000 donation per Facility (\$1,750,000 total) to the Florida Council on Compulsive Gambling and maintain a voluntary exclusion list, so long as exclusivity is maintained.
Class III Gaming is authorized in non-specified facilities within Miami-Dade, Palm Beach, or Broward County	Guaranteed minimum payments and revenue sharing payments cease.	Guaranteed minimum payments cease and revenue sharing payments are calculated excluding Broward County facilities.
Class III Gaming is authorized outside of Miami-Dade, Palm Beach, or	All payments under the Compact cease.	All payments under the Compact cease.

⁴⁴ Blackjack must be authorized by state law before it may be offered at any facility in Broward or Miami-Dade.

⁴⁵ The 2015 Compact allows the Legislature to authorize two additional facilities, one located in Miami-Dade County and one located in Palm Beach County, which may offer slot machines or video race terminals without violating the exclusivity provisions under certain circumstances.

The 2015 Compact contains “internet/online gaming” and “new games” provisions similar to the 2010 Compact. If state law is amended to permit “internet/on-line gaming,” the Tribe will no longer be required to make payments to the state based on the Guaranteed Minimum Compact Term Payments, but will be required to continue make Revenue Share Payments. Internet gaming is not defined in the 2015 Compact.

The 2015 Compact also defines two new types of gaming, as they would relate to the Compact, “video race terminals” and “designated player games.” These games could possibly be considered types of Class III gaming; however, the 2015 Compact specifically excludes both types from violating the exclusivity provisions of the 2015 Compact, in certain situations.

Effect of the Bill: Seminole Gaming Compact

Indian Gaming in Florida

Ratification of the 2015 Compact

The bill ratifies and approves the 2015 Compact between the Tribe and the State of Florida. If ratified, the 2015 Compact will supersede the 2010 Compact. Furthermore, the bill requires Governor Scott to cooperate with the Tribe in seeking approval of the 2015 Compact from the United States Secretary of the Interior.

The bill authorizes the Tribe to conduct dice games, such as craps and sic-bo, and wheel games, such as roulette and big six, in addition to the already authorized Class III games.

Obligations of the 2015 Compact

The ratification of the 2015 Compact permits the Tribe to offer the following games, termed “covered games,” at all seven of its tribal casinos:

- Banked card games, including blackjack, chemin de fer, and baccarat;
- Slot machines;
- Raffles and drawings;
- Live table games, including craps and roulette; and
- Any other game authorized for any person for any purpose, except for a compact with a qualifying Indian Tribe.

The ratification of the 2015 Compact provides that “[a]ny of the facilities existing on Indian Lands... may be relocated, expanded, or replaced by another facility on the same Indian Lands with advance notice of sixty (60) calendar days.”

The ratification of the 2015 Compact places a cap on the number of slot machines, banking or banked card games, and live table games that may be offered by the Tribe.

The 2015 Compact has a term of 20 years.

Payments to the State for the 2015 Compact

The 2015 Compact establishes a guarantee minimum payment period that is defined as the seven year period beginning July 1, 2017, and ending June 30, 2024. During the guarantee minimum payment period, the Tribe will make payments as specified, to total \$3 billion over seven years. The payments shall be paid by the Tribe to the state as follows:

- During the initial period (from the effective date to June 30, 2017), the Tribe makes payments based on a variable percentage of net win similar to the percentage payments in the 2010 Compact.
- During the guarantee minimum payment period from July 1, 2017 to June 30, 2024, the Tribe pays a total of \$3 billion over seven years.
- At the end of the guarantee minimum payment period, if the percentage payments (that range from 13 percent of net win up to \$2 billion, to 25 percent of net win greater than \$4.5 billion) would have amounted to more than the guaranteed minimum payments, the Tribe must pay the difference.
- The Tribe's guaranteed minimum revenue sharing payments are:
 - \$325 million – 1st year;
 - \$350 million – 2nd year;
 - \$375 million – 3rd year;
 - \$425 million – 4th year;
 - \$475 million – 5th year;
 - \$500 million – 6th year; and
 - \$550 million – 7th year.
- The percentage payments include a 1 percent increase on amounts up to \$2 billion, and a 2.5 percent increase on amounts greater than \$2 billion, up to and including \$3 billion, as compared to the 2010 Compact.
- After the first seven years, the Tribe will continue to make percentage payments to the state without a guaranteed minimum payment.

Exclusivity Requirements of the 2015 Compact

Revenue sharing payments may be affected if the state permits:

- New forms of Class III gaming or other casino-style gaming after July 1, 2015, or Class III gaming or other casino-style gaming at any location not authorized for such games before July 1, 2015;
 - Licensed pari-mutuel wagering entities other than the Tribe to offer banked card games;
 - Class III gaming at other locations in Miami-Dade, Broward, or Palm Beach counties, except the legislature may add one location in Miami-Dade County with 750 slot machines and 750 video race terminals, if approved by a county-wide referendum, and similarly one location in Palm Beach County;
 - Class III gaming to be offered outside of Miami-Dade, Broward, and Palm Beach Counties.
- Licensed pari-mutuel wagering entities may not increase the number of slot machines they offer or relocate their facility. If they do so, the guaranteed minimum payments from the Tribe to the state cease and the percentage payments are calculated excluding the Tribe facilities located in Broward County.

The 2015 Compact indicates that internet gaming is not currently permitted in Florida. If the legislature authorizes internet gaming, the guaranteed minimum payments cease, but the percentage payments continue. If the Tribe offers internet gaming to patrons, then the guaranteed minimum payments continue.

Exceptions to Violations of the 2015 Compact Exclusivity Provisions

The 2015 Compact provides that the legislature may authorize non-tribe pari-mutuel wagering entities to conduct the following actions without affecting revenue sharing:

- Licensed pari-mutuel wagering facilities in Miami-Dade and Broward Counties may offer blackjack, subject to limitations;
- One new location in Miami-Dade County may offer slot machines and video race terminals, subject to limitations, if approved by a county-wide referendum;
- One new location in Palm Beach may offer slot machines and video race terminals, subject to limitations, if approved by a county-wide referendum;
- Slot machines and video race terminals at the above locations do not violate the 2015 Compact so long as a maximum of 500 slot machines and 250 video race terminals are offered before October

1, 2018, and a maximum of 750 slot machines and 750 video race terminals are offered after October 1, 2018.

Current Situation: Pari-mutuel Wagering

Licensed Pari-mutuel Wagering in Florida

In Florida, pari-mutuel wagering is authorized on jai alai, greyhound racing and various forms of horseracing and overseen by the Division. Chapter 550, F.S., provides specific licensing requirements, taxation provisions, and regulations for the conduct of the industry.

Pari-mutuel wagering activities are limited to operators who have received a permit from the Division, which is then subject to ratification by county referendum. Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities,⁴⁶ cardrooms,⁴⁷ and slot machines.⁴⁸

Horse racing was authorized in the state in 1931. The state authorizes three forms of horse racing classes for betting: thoroughbred, harness, and quarter horse racing. Thoroughbred racing involves only horses specially bred and registered by certain bloodlines. The thoroughbred industry is highly regulated and specifically overseen by national and international governing bodies. Harness racing uses standard bred horses, which are a “pacing or trotting horse...that has been registered as a standardbred by the United States Trotting Association” or by a foreign registry whose stud book is recognized by the USTA.⁴⁹ Quarter horse racing involves horses developed in the western United States which are capable of high speed for a short distance.⁵⁰ They are registered with the American Quarter Horse Association.

Permit Applications

The Division approves pari-mutuel wagering permits. Generally, as long as the applicant meets statutory minimum requirements, the Division issues the permit. There is no application fee. While the Division is authorized to charge applicants for its investigation, it has not done so in recent years. It determines eligibility using existing resources.

The Division has issued 50 pari-mutuel wagering permits, and 5 non-wagering permits. There are 35 pari-mutuel permitholders currently operating at 29 facilities throughout Florida.⁵¹ Currently, 24 pari-mutuel facilities are operating cardrooms. There are eight 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:

- 19 Greyhound permits
- 5 Thoroughbred permits
- 1 Harness permit
- 5 Quarter Horse permits
- 8 Jai-Alai permits
- 1 track offering limited intertrack wagering and horse sales

Permit Revocation

Under certain circumstances in statute, a permitholder may lose his or her permit to conduct pari-mutuel wagering. If a permitholder has failed to complete construction of at least 50 percent of the facilities necessary to conduct pari-mutuel wagering within 12 months after approval by the voters of

⁴⁶ s. 550.0115, F.S.

⁴⁷ s. 849.086, F.S.

⁴⁸ s. 551.104, F.S.

⁴⁹ s. 550.002(33), F.S.

⁵⁰ s. 550.002(28), F.S.

⁵¹ Florida Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering, *Pari-Mutuel Permitholders with 2015-2016 Operating Licenses*, available at <http://www.myfloridalicense.com/dbpr/pmw/documents/MAP-Permitholders--WITH--2015-2016-OperatingLicenses.pdf>

the permit, the Division shall revoke the permit after giving adequate notice to the permitholder.⁵² The Division may grant one extension of 12 months upon a showing of good cause by the permitholder.

If a permitholder fails to pay tax on handle for live thoroughbred horse performances for a full schedule of live races for two consecutive years, his or her permit is void and escheats back to the state, unless the failure of payment was due to events beyond the control of the permitholder.⁵³ Financial hardship to the permitholder does not, in and of itself, constitute just cause for the failure to pay taxes in this section. There is a similar requirement for harness racing permitholders in s. 550.9512(3)(a), F.S. In the case of failure to pay taxes, the permit escheats to the state and may be reissued.

Permit Relocation

Certain permitholders may relocate the location listed in their permit to a new location within 30 miles. Greyhound and jai alai permitholders operating in counties where they are the only permitholder of that class may relocate under s. 550.0555, F.S. Greyhound permitholders that converted their permit from a jai alai permit under s. 550.054, F.S., may relocate under that statute. A greyhound permitholder in a county where it is the only permitholder who operates at a leased facility may also relocate under s. 550.054, F.S.

In each of these cases, the relocation must not cross county boundaries and must be approved under the local zoning regulations. In relocation under s. 550.054, F.S., the Division is required to grant the application for relocation once the permitholder fulfills the requirements of the statute. Approval by the Division is required for relocations under s. 550.0555, F.S.

Permit Conversion

Certain permitholders may convert their permits, for instance, a permit for pari-mutuel wagering on jai alai may be converted to greyhound racing if the permitholder meets certain criteria.⁵⁴ In the past, quarter horse permits have been converted to limited thoroughbred permits,⁵⁵ jai alai to greyhound racing,⁵⁶ etc.

Permitholders may also convert to conduct summer jai alai, in certain circumstances.⁵⁷ This provision, enacted in 1980, has been subject to competing interpretations.⁵⁸ The bill enacting the provision included in a whereas clause a finding that "it would be to the best interests of the state to permit summer jai alai *so long as there is no increase in the number of permittees authorized to operate* within any specified county." The provision provides:

If a permitholder that is eligible under this section to convert a permit chooses not to convert, a new permit is made available in that permitholder's county to conduct summer jai alai games as provided by this section, notwithstanding mileage and permit ratification requirements. If a permitholder converts a quarter horse racing permit pursuant to this section, this section does not prohibit the permitholder from obtaining another quarter horse racing permit.

If the provision is interpreted to provide for the issuance of a new permit, it could be used to issue new permits as often as every two years.

⁵² s. 550.054(10), F.S.

⁵³ s. 550.09515(3)(a), F.S.

⁵⁴ s. 550.054(14), F.S., ruled an unconstitutional act by *Debary Real Estate Holdings, LLC v. State, Dept. of Business and Professional Regulation, Div. of Pari-Mutuel Wagering*, 112 So.3d 157, 168 (Fla. 1st DCA 2013).

⁵⁵ See s. 550.3345, F.S.

⁵⁶ ch. 89-219, Laws of Fla.

⁵⁷ s. 550.0745, F.S.

⁵⁸ Following rulings from the First and Third District Courts of Appeal, DBPR issued a new summer jai alai permit to the South Florida Racing Association in Miami-Dade county. *South Florida Racing Association, LLC v. Department of Business & Professional Regulation, Division of Pari-mutuel Wagering, Consent Order, Case No. 2014-042577* (July 31, 2015).

Intertrack Wagering

Wagering on races hosted at remote tracks is called intertrack (when both tracks are in Florida) or simulcast (when one track is out of state) wagering. In-state 'host tracks' conduct live or receive broadcasts of simulcast races that are then broadcast to 'guest tracks,' which accept wagers on behalf of the host. To conduct intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing and meet other requirements.⁵⁹

A limited amount of intertrack wagering is also authorized by statute for one permanent thoroughbred sales facility.⁶⁰ In order to qualify for a license, the facility must have at least 15 days of thoroughbred horse sales at a permanent sales facility in this state for at least three consecutive years. Additionally, the facility must have conducted at least 1 day of nonwagering thoroughbred racing in this state, with a purse structure of at least \$250,000 per year for 2 consecutive years before application for a license.

A limited intertrack wagering licensee is limited to conducting intertrack wagering during:

- The 21 days in connection with thoroughbred sales;
- Between November 1 and May 8;
- Between May 9 and October 31, if:
 - No permitholder within the county is conducting live events.
 - Permitholders operating live events within the county consent.
 - For the weekend of the Kentucky Derby, the Preakness, the Belmont, and a Breeders' Cup Meet.

The licensee is further limited to intertrack wagering on thoroughbred racing, unless all permitholders in the same county consent. The licensee must pay 2.5 percent of total wagers on jai alai or greyhound racing to thoroughbred permitholders operating live races for purses.

Live Racing Requirements

To be eligible for a cardroom license, permitholders must conduct at least 90% 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 conduct intertrack or simulcast wagering, permitholders must conduct a full schedule of live racing as defined in ch. 550 and meet other requirements.⁶² To continue to offer slot machines, permitholders must conduct a full schedule of live racing as defined in ch. 550.⁶³

Effect of the Bill: Pari-Mutuel Wagering

Licensed Pari-mutuel Wagering in Florida

The bill amends s. 550.0251, F.S., providing that the Division shall make an annual report to the President of the Senate, and the Speaker of the House of Representatives, in addition to current law that requires an annual report to the Governor.

The report shall include, at a minimum:

- Recent events in the gaming industry, including pending litigation, pending facility license applications, and new and pending rules.
- Actions of DBPR relative to the implementation and administration of ch. 550, F.S.
- The state revenues and expenses associated with each form of authorized gaming. Revenues and expenses associated with pari-mutuel wagering shall 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 DBPR.

⁵⁹ See s. 550.615, F.S.

⁶⁰ s. 550.6308, F.S.

⁶¹ s. 849.086(5)(b), F.S.

⁶² See s. 550.615, F.S.

⁶³ s. 551.104(1)(c), F.S.

- Any suggestions to more effectively achieve the purposes of ch. 550, F.S.

Permit Applications

The bill provides that, effective upon becoming law, the Division may not approve or issue any new permit authorizing pari-mutuel wagering.

Permit Revocation

The bill provides additional basis for the Division to revoke a permit:

- If a permit holder has failed to obtain an operating license to conduct live events for a period of more than 24 consecutive months.
- If a permit holder has failed to conduct live performances within the 24 months prior to the effective date of the bill, unless the permit was issued under s. 550.3345, F.S., or ss. 551.1041-551.1044, F.S., after meeting the requirements of s. 551.104(2)(a)4., F.S.
- If a permit holder fails to pay taxes on handle for more than 24 consecutive months. This extends the existing requirement relative to thoroughbred and harness racing permits to all pari-mutuel wagering permits.

The bill specifies that permits revoked under these situations are void and may not be reissued.

The bill provides that approval may be obtained upon a request to place a permit in inactive status for up to 24 months. While in inactive status, the permit holder is ineligible for licensure for pari-mutuel wagering, cardrooms or slot machines.

Permit Relocation

The bill repeals all relocation provisions, with the exception of allowing permit holders that converted their permit from a jai alai permit to a greyhound permit to relocate within 30 miles of the current facility, as long as they do not cross county lines and apply prior to July 31, 2018.

Permit Conversion

The bill repeals all conversion provisions.

Intertrack Wagering

The bill reduces requirements for intertrack wagering:

- Any track or fronton licensed under ch. 550, F.S., and any permit holder that does not perform a full schedule of live races, may receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games.
- However, some permit holders may still need to obtain written consent if the same class of live race or game is conducted within the market area of the permit holder to accept intertrack wagers.

Limited Intertrack Wagering

The bill also reduces the requirements to obtain a limited intertrack wagering license:

- The number of days for public sales of thoroughbred horses is reduced from 15 to 8.
- The requirement to conduct at least one day of nonwagering racing is removed.
- Some restrictions on the conduct of intertrack wagering are removed.
- The requirement to obtain consent of other county permit holders to accept intertrack wagers on non-thoroughbred events is removed.

Live Racing Requirements

The bill removes the live racing requirement for all harness, quarterhorse, and greyhound racing permitholders who meet minimum requirements, and for thoroughbred racing permitholders located in a county with a population of more than 2.5 million who have had an operating license for 25 years and a slot license for 5 years. The bill amends ch. 550, F.S., to provide conforming changes throughout the chapter to allow certain permitholders the ability to operate pari-mutuel wagering, cardrooms, and slots without live racing and provides the option for permitholders to choose whether to continue to conduct live performances or to conduct no live performance.

Thoroughbred Purse Pool

The bill creates a thoroughbred racing purse pool to be allocated to certain thoroughbred permitholders. The bill amends s. 285.710, F.S., and provides that, in addition to the three percent distributed to local governments, including counties and municipalities affected by the Seminole Tribe's operation of covered games, \$10 million of the amount paid by the Tribe to the state shall be designated as a thoroughbred purse pool. The purse pool shall be distributed equally to any thoroughbred permitholder that:

- Has conducted a full schedule of live races for 15 consecutive years preceding the 2015-2016 fiscal year;
- Has never held a slot machine license; and
- Is located in a county in which class III gaming is conducted on Indian lands.

The permitholder that receives the allocation from the purse pool must use it for thoroughbred racing purses and the operations of the permitholder's thoroughbred racing facility.

Other Changes to Pari-mutuel Wagering

The bill:

- Removes all tax credits for greyhound permitholders and revises the tax on handle for live greyhound racing and intertrack wagering from 5.5% to 1.28%;
- Repeals s. 550.1647, F.S., relating to tax credits for unclaimed tickets at greyhound facilities;
- Revises the requirements for a greyhound permitholder to provide a greyhound adoption booth at its facility, defines the term "bona fide organization that promotes or encourages the adoption of greyhounds," and requires sterilization of greyhounds before adoption;
- Creates s. 550.2416, F.S., requiring injuries to racing greyhounds be reported on a form adopted by the Division within a certain timeframe and specifying information that must be included in the form. It requires the Division to maintain the forms as public records for a specified time and specifies disciplinary action that may be taken against a licensee of DBPR who fails to report an injury or who makes false statements on an injury form. The Division may also fine, suspend, or revoke the license of any individual who knowingly violates any part of the section. It allows DBPR to adopt a rule defining "injury."
- Requires greyhound permitholders to offer certain simulcast signals if offering intertrack wagering and requires a greyhound permitholder to conduct intertrack wagering on thoroughbred signals to operate a cardroom.

Current Situation: Cardrooms

Cardrooms in Florida

Cardrooms were authorized at pari-mutuel facilities in 1996.⁶⁴ Cardrooms can only be offered at a location where the permitholder is authorized to conduct pari-mutuel activities. To be eligible for a cardroom license, permitholders must conduct at least 90% of the performances conducted the year

⁶⁴ s. 20, Ch. 96-364, Laws of Fla.
STORAGE NAME: pcb02a.RAC
DATE: 2/12/2016

they applied for the initial cardroom license or the prior year, if the permitholder ran a full schedule of live performances.⁶⁵

The cardrooms may operate 18 hours per day on Monday through Friday and for 24 hours per day on Saturday and Sunday. No-limit poker games are permitted. Such games are played in a non-banking matter, i.e., the house has no stake in the outcome of the game. Cardrooms 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.

Designated Player Games

Designated player games card games (also known as player-banked games) are card games where a designated player occupies the position of the dealer in a game. Other players compete against the designated player individually to determine the game's winner, and the designated player collects or pays out winnings from their own bank.

Several pari-mutuel facilities that also operate cardrooms in the state are currently operating designated player games. A pari-mutuel facility that operates a cardroom may only offer authorized games within the cardroom. An "authorized game" is defined as "a game or series of games of poker or dominos which are played in a nonbanking manner."⁶⁶ The licensed cardrooms are prohibited from offering "banked" card games in which players bet against the house.

Under the Division's rule 61D-11.002, cardroom operators are required to determine house rules for the operation of designated player games.⁶⁷ The house rules must establish uniform requirements to be a designated player, ensure that the opportunity to be the dealer rotates around the table, and not require the designated player to cover all wagers.⁶⁸ From the play of designated player games, the pari-mutuel facilities have seen revenues at some facilities increase by up to 20 percent.⁶⁹

In October 2015, the Division proposed rules to ban designated player games and delete the requirements for operation of designated player games.⁷⁰ After a rule challenge to the proposed rule, the Division revised its proposed rules to remove the prohibition against designated player games, but the proposed rule still deletes the cardroom requirements for designated player games.⁷¹ In January 2016, the Division issued administrative complaints against seven pari-mutuel facilities, stating that the facilities are "operating a banking game or a game not specifically authorized" by state law.⁷² The results of the complaints are pending.

The Seminole Compacts and Designated Player Games

The 2010 Compact specifically limits the type of banking games that may be authorized or offered in Florida without violating the exclusivity provisions of the Compact; however, it is unclear if a designated player game would violate these provisions and the 2010 Compact does not specifically address designated player games.

The 2015 Compact provides that games are banked if banked by either the house or player; however, "designated player games" as defined by the 2015 Compact do not violate the exclusivity provisions, so long as the designated player game is operated under certain conditions.

⁶⁵ s. 849.086(5)(b), F.S.

⁶⁶ s. 849.086, F.S.

⁶⁷ Rule 61D-11.002, F.A.C.

⁶⁸ *Id.*

⁶⁹ Kam, Dara, *Gambling operators outraged over card games*, Sun Sentinel, available at <http://www.sun-sentinel.com/business/consumer/fl-nsf-gambling-card-games-illegal-20151203-story.html>, (last visited Feb. 4, 2016).

⁷⁰ Proposed Rule 61D-11.002, F.A.C. (Published in F.A.R. Oct. 19, 2015).

⁷¹ Proposed Rule 61D-11.002, F.A.C. (Notice of Change. Jan. 15, 2016).

⁷² Kam, Dara, *State targets pari-mutuels over card games*, Tampa Bay Business Journal, available at <http://www.bizjournals.com/tampabay/news/2016/01/27/state-targets-pari-mutuels-over-card-games.html> (last visited Feb. 4, 2016) and Administrative Complaints filed by the Division (Jan. 25, 2016)(on file with the Regulatory Affairs Committee).

Under the 2015 Compact a "designated player" is "the player identified by a button as the player in the dealer position, seated at any traditional player position in a Designated Player Game, who is not required to cover all wagers."

Under the 2015 Compact, the term "designated player game" means "games consisting of at least three (3) cards in which players compare their cards only to those cards of the player in the dealer position, who also pays winners and collects from losers. The ranking of poker hands in such game(s) shall be consistent with the definition of traditional poker hand rankings provided in Hoyle's Modern Encyclopedia of Card Games, 1974 Ed."

The conditions under which designated player games are authorized include:⁷³

- The maximum wager in any game may not exceed \$25.
- The designated player must occupy a playing position at the table
- The designated player position must be offered after each hand, in a clockwise rotation, to each player.
- A player that participates as a designated player for 30 consecutive hands must play as a non-designated player for at least 2 hands before resuming play as the designated player.
- A designated player may not be required to cover more than 10 times the minimum posted bet for players seated during any one game.
- Licensed pari-mutuel facilities that offer slot machines or video race terminals may not offer designated player games.
- Designated player game tables offered at a licensed pari-mutuel cardroom facility may not exceed 25 percent of the total poker tables authorized at the cardroom.

Current Situation: Slot Machines

Slot Machines in Florida

Racinos, pari-mutuel facilities that operate slot machine gaming, are governed by ch. 551, F.S. Eligible facilities are defined to include:

- Any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county;
- Any licensed pari-mutuel facility located within a county as defined in s. 125.011, F.S., provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter; or
- Any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter.

Seven pari-mutuel facilities obtained eligibility through constitutional approval - the first clause. An additional pari-mutuel facility, Hialeah Park, was ineligible as it had not operated live racing or games during 2002 and 2003. It obtained eligibility through the second clause.

No facilities have obtained eligibility through the third clause; however, it has been subject to competing interpretations. Stakeholders and counties have argued that the phrase "after the effective date of this section" applies to "a countywide referendum held" - so any county could authorize slot machines

⁷³ *Id.*

relying on their general authority to hold referenda. Based on this interpretation, Brevard, Gadsden, Lee, Palm Beach, Hamilton and Washington counties, have approved slot machines at pari-mutuel facilities by referendum, but have not received a slot machine license.

The Attorney General rejected this interpretation, arguing that the phrase "after the effective date of this section" modified the phrase "a statutory or constitutional authorization"⁷⁴ - so, counties could not rely on their general authority to hold referenda, instead needing a specific authorization to hold a referendum on the question of slot machines, which the Division followed.⁷⁵ Permitholders have disputed this interpretation and, after appealing one case to the 1st District Court of Appeal, cases are currently pending in the Florida Supreme Court and the 4th District Court of Appeal on the issue.⁷⁶ Were such gaming to occur, all revenue sharing would end under the 2010 Compact (if outside Miami-Dade or Broward Counties) and the 2015 Compact (if outside of Miami-Dade, Broward, or Palm Beach Counties). The 2010 Compact was ratified in the same law that effectuated the third clause.

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.

To continue to offer slot machines, permitholders must conduct a full schedule of live racing.⁷⁷ Additionally, thoroughbred permitholders must file an agreement between the track and the Florida Horsemen's Benevolent and Protective Association governing payment of purses on live thoroughbred races at the licensee's facility with the Division, as well as an agreement with the Florida Thoroughbred Breeders' Association on the payment of breeders', stallion, and special racing awards on those races.⁷⁸ Similarly, quarter horse permitholders must file an agreement with the Division between the track and the Florida Quarter Horse Racing Association or the association representing a majority of the horse owners and trainers at the licensee's facility governing the payment of purses on live quarter horse races at the licensee's facility.⁷⁹

Video Race Terminals

Video race terminals, also known as instant racing or historical racing machines, are a form of electronic gaming that may resemble slot machines and are based on video replays of previously conducted in-state or out-of-state horse or dog races.

To use a video race terminal, a player deposits a wager and a race is randomly selected from a video library of previously conducted races. Identifying information about the race, horses, or jockeys is not shown, but players may be able to view statistics of the jockey or trainer's past performance. Players can choose a winner or have the video race terminal automatically select a winner at random.

⁷⁴ 2012-01 Fla. Op. Att'y Gen. (2012).

⁷⁵ Mary Ellen Klas, *Attorney General Opinion Puts Reins on Slots at Gretna Barrel Racing Track*, Miami Herald (Jan. 12, 2012), <http://www.miamiherald.typepad.com/nakedpolitics/2012/01/attorney-general-opinion-puts-reins-on-gretna-barrel-racing-.html>.

⁷⁶ The first district court of appeal certified a question to the Florida Supreme Court and the Florida Supreme Court has accepted jurisdiction. See *Gretna Racing, LLC v. Dep't of Bus. & Prof'l Regulation*, 178 So. 3d 15 (Fla. Dist. Ct. App. 2015) review granted *sub nom. Gretna Racing, LLC v. Florida Dep't of Bus. & Prof'l Regulation*, No. SC15-1929, 2015 WL 8212827 (Fla. Dec. 1, 2015).

⁷⁷ s. 551.104(1)(c), F.S.

⁷⁸ s. 551.104(10)(a)1, F.S.

⁷⁹ s. 551.104(10)(a)2, F.S.

Video race terminals have previously not been authorized in Florida. Other states, including Oregon⁸⁰ and Kentucky,⁸¹ operate video race terminals legally. Video race terminals are currently illegal in both Idaho⁸² and Texas.⁸³ Both states have been involved in disputes over the legality of the terminals. Wyoming allowed video race terminals on and off for several years, but as of late 2015, the terminals were shut down after a Wyoming Attorney General opinion found the terminals to be illegal.⁸⁴ Legislation to allow video race terminals in Colorado⁸⁵ and Virginia⁸⁶ has previously failed.

The Seminole Compacts and Video Race Terminals

The 2010 Compact provides that if slot machines, other than lottery vending machines as defined by the 2010 Compact, are authorized or offered in Florida outside of the preexisting facilities in Miami-Dade and Broward County, then the exclusivity provision of the Compact is violated and certain revenue sharing and guaranteed minimum payments shall cease. A “video race terminal” may be considered a slot machine under the 2010 Compact if the machines are not operated in accordance with the limitations provided in the 2010 Compact for a similar machine called “historic racing machines.”

The 2010 Compact also provides that if slot machines are authorized or offered in Florida outside of the preexisting facilities in Miami-Dade and Broward County, then the exclusivity provision of the Compact is violated and certain revenue sharing payments may cease.

However, the 2015 Compact authorizes the operation of 500 slot machines and 250 video race terminals before October 1, 2018 and 750 slot machines and 750 video race terminals after October 1, 2018, at two new facilities, beyond the 8 currently operating pari-mutuel facilities with authorized slot machine licenses in Miami-Dade and Broward County. One of the new pari-mutuel facilities that may offer slot machines and video race terminals under these provisions must be located in Miami-Dade County, and the other pari-mutuel facility must be located in Palm Beach County. Additionally, the operation of slot machines and video race terminals must be approved by a county-wide referendum held after the effective date of the 2015 Compact.⁸⁷

The 2015 Compact defines a video race terminal as, “an individual race terminal linked to a central server as part of a network-based video game, where terminals allow pari-mutuel wagering by players on the results of previously conducted horse races, but only if the game is certified in advance by an independent testing laboratory licensed or contracted by the Division as complying with all the following requirements:

- All data on previously conducted horse races must be stored in a secure format on the central server, which is located at the pari-mutuel facility.
- Only horse races that were recorded at licensed pari-mutuel facilities in the United States after January 1, 2005, may be used.

⁸⁰ THE OREGONIAN, *Oregon Legislature Oks instant racing machines at Portland Meadows*,

http://www.oregonlive.com/politics/index.ssf/2013/05/oregon_legislature_oks_instant.html (last visited Feb. 6, 2016).

⁸¹ 810 KAR 1:011 and 1:120, *see Wagering on Historical Races Totals*, KENTUCKY HORSE RACING COMMISSION, *available at* <http://khrc.ky.gov/Documents/HRWOctober2015.pdf>; *see also* LEGISLATIVE RESEARCH COMMISSION, *State racing commission seeks more regulations on 'historical race wagering' despite looming lawsuit*, <http://www.nkytribune.com/2015/10/state-racing-commission-seeks-more-regulations-on-historical-race-wagering-despite-looming-lawsuit/> (last visited Feb. 6, 2016). Additional regulations pending.

⁸² Betsy Russell, *Idaho Supreme Court rejects Otter veto; 'instant racing' machines banned*, THE SPOKESMAN-REVIEW, Sept. 11, 2015, *available at* <http://www.spokesman.com/stories/2015/sep/11/idaho-supreme-court-rejects-otter-veto-instant/>.

⁸³ Aman Batheja, *Judge Strikes Down State Plans for "Historical Racing,"* THE TEXAS TRIBUNE, Nov. 10, 2014, *available at* <http://www.texastribune.org/2014/11/10/judge-strikes-down-state-plans-historical-racing/>.

⁸⁴ Memorandum from Wyo. Attorney Gen. Peter K. Michael (Sept. 23, 2015), *available at* http://trib.com/ag-opinion-on-historic-horse-racing-terminals/pdf_7ceea36a-7a1e-59dc-8e3b-b60c49678328.html; *see also* Wyo. Stat. Ann. § 11-25-102.

⁸⁵ HB 2313 (VA 2015).

⁸⁶ HB 09-1152 (CO 2009).

⁸⁷ *Id.* at 47-48.

- After each wager is placed, the Video Race Terminal must display a video of at least the final seconds of the horse race before any prize is awarded or indicated on the Video Race Terminal.
- The display of the video of the horse race must be shown on the Video Race Terminal's video screen.
- No mechanical reel displays are permitted.
- No Video Race Terminal may contain more than one player position for placing wagers.
- No coins, currency or tokens may be dispensed from a Video Race Terminal.
- Prizes must be awarded based solely on the results of a previously conducted horse race, No additional element of chance may be used. However, a random number generator must be used to select the race from the central server to be displayed to the player(s) and to select numbers or other designations of race entrants that will be used in the various bet types for any "Quick Pick" bets. To prevent an astute player from recognizing the race based on the entrants and thus knowing the results before placing a wager, the entrants of the race may not be identified until after all wagers for that race have been placed.”⁸⁸

To comply with this exception, a wager on a video race terminal or slot machine located at the two pari-mutuel facilities may not exceed \$5, only one game or race may be played at a time, and terminals may not offer games using tangible playing cards.⁸⁹

Effect of the Bill: Cardrooms

Cardrooms in Florida

The bill extends the hours of operation for all cardrooms from 18 to 24 hours 7 days a week.

Designated Player Games

The bill defines designated player games and restricts which cardroom operators and licensed pari-mutuel facilities may offer designated player games. The bill requires cardroom operators that offer designated player games to run game play according to requirements in the 2015 Compact and the Division rules.

The bill authorizes the Division to approve designated player games at cardrooms only if the games would not trigger a reduction in revenue-sharing payments under the Compact.

The bill defines a "designated player" as a "player identified as the player in the dealer position, seated at a traditional player position in a designated player game, who pays winning players and collects from losing players."

The bill defines a "designated player game" as a "game consisting of at least three cards in which the players compare their cards only to the cards of the designated player."

The bill permits the Division to authorize cardroom operators that do not possess slot machines or a slot machine license to offer designated player games, provided the maximum wager may not exceed \$25.

The bill provides that designated player games offered by a cardroom operator may not make up more than 25 percent of the total authorized game tables. The bill also prohibits licensed pari-mutuel facilities that offer video race terminals and slot machines from offering designated player games.

The bill provides requirements for the operation of designated player games. The bill requires the designated player to occupy a playing position at the table and prohibits the cardroom from requiring a

⁸⁸ 2015 Compact Between the Seminole Tribe of Florida and the State of Florida, p. 14 (Dec. 7, 2015), on file with the Business and Professions Subcommittee.

⁸⁹ *Id.*

designated player to cover all wagers or more than 10 times the minimum posted wager for seated players.

The bill requires that the designated player position be rotated amongst the seated players in the game and the designated player position to be offered in a clockwise position after each hand. A player may decline the opportunity to be designated player. The bill provides that a player who participates as a designated player for 30 hands must play as a non-designated player for at least two hands before resuming as designated player.

The bill requires that a designated player operate independently and only wager personal funds or funds from a sole proprietorship. The bill prohibits a cardroom operator from serving as a designated player and from having a financial interest in a designated player.

Effect of the Bill: Slot Machines

Slot Machines in Florida

The bill moves the requirements for obtaining a license to conduct slot machines into the licensing provision and out of the definition and authorization provisions.

The bill continues to require that a slot machine license can only be issued as provided for in current law but removes the provision that caused litigation, discussed above, under which no license has been issued by the state.

In order for a pari-mutuel permit holder to obtain slot machine licensure, the applicant must meet several requirements. First, the facility at which the applicant seeks to operate slot machines must be:

- A licensed pari-mutuel facility where live racing or games were conducted during calendar years 2002 and 2003, located in Miami-Dade County or Broward County, and authorized for slot machine licensure pursuant to s. 23, Art. X of the State Constitution;
- A licensed pari-mutuel facility where a full schedule of live horseracing has been conducted for 2 consecutive calendar years immediately preceding its application for a slot machine license and located within a county as defined in s. 125.011, F.S.;
- A licensed pari-mutuel facility located in a county that has a total population of at least 1.25 million, has at least 30 incorporated municipalities, that is located in a county other than Miami-Dade and Broward Counties, in which a majority of voters approve slot machines at such facility in a countywide referendum held after the effective date of this act and concurrently with a general election in which the offices of President and Vice President of the United States are on the ballot, and that pays the required license fee and meets the other requirements of this chapter. However, a license to conduct slot machine gaming may not be granted by the Division pursuant to this subparagraph unless the gaming compact, authorized pursuant to s. 285.710 (3)(b), between the Seminole Tribe of Florida and the State of Florida indicates that slot machine gaming conducted by such slot machine licensee does not violate any of the compact's provisions. Licensure in accordance with this subparagraph is only permitted if the permit holder relinquishes one pari-mutuel permit issued in accordance with chapter 550 to the state before issuance of the license. Any relinquished pari-mutuel permit is void and shall not be reissued. Any permit holder licensed in accordance with this subparagraph is exempt from all of the live racing requirements of chapter 550 and this chapter; or,
- Selected pursuant to ss. 551.1041-551.1044, is located within a county with a population of at least 2.5 million people in which a majority of voters in a countywide referendum voted to allow slot machines before December 30, 2011, and a majority of voters approve slot machines at such facility in a countywide referendum held after the effective date of this act and concurrently with a general election in which the offices of President and Vice President of the United States are on the ballot, and pays the required license fee and meets the other requirements of this chapter. However, a license to conduct slot machine gaming may not be granted by the Division pursuant to this subparagraph unless the gaming compact, authorized pursuant to s. 285.710 (3)(b), between the Seminole Tribe of Florida and the State of Florida indicates that slot machine gaming conducted

by such slot machine licensee does not violate any of the compact's provisions. Any permitholder licensed in accordance with this subparagraph is exempt from all live racing requirements contained in chapter 550 and this chapter.

If a facility meets one of the above four requirements, the voters of the county where the applicant's facility is located must authorize, by referendum, slot machines within pari-mutuel facilities in that county.

Finally, the Division may not issue a license if such an issuance would trigger a reduction in revenue-sharing payments under the 2015 Compact.

The following changes are also made to the operation of slot machines in Florida, specifically the bill:

- Extends the hours of operation for all slot machine licensees from 18 to 24 hours 7 days a week.
- Lowers the tax rate on slot machine revenues from 35 percent to 30 percent, with the option for a facility to acquire a tax rate of 25 percent if the facility voluntarily elects to permanently reduce its authorized total number of slot machines to 1,500 machines or less.
- Reduced the maximum number of slot machines that a facility may make available for play from 2,000 machines to 1,750 machines, except for slot machine licensees licensed under s. 551.104(2)(a)3. or 4.
- Removes a prohibition against offering complimentary or reduced cost alcoholic beverages to persons playing slot machines and a prohibition against allowing an automated teller machine in the gaming area of a facility of a slot machine licensee.

Video Race Terminals

The bill defines a "video race terminal" as an "individual race terminal linked to an in-state central server as part of a network-based video game where the terminals allow a form of pari-mutuel wagering on the results of previously conducted in-state or out-of-state thoroughbred races."

The bill authorizes video race terminals for slot machine licensees operating at a facility authorized pursuant to s. 551.104(2)(a)3., F.S., and at a limited slot machine facility selected pursuant to ss. 551.1041-551.1044, F.S.

The bill provides several conditions for the operation of video game terminals. All of the conditions required under the 2015 Compact to meet the exception to exclusivity are included in the bill.

Additionally, the bill requires that handicapping data regarding past performance be provided before the wager is placed and specifies that identifying information about the race or horse may not be displayed until after the wager is irrevocably placed.

The bill provides additional consumer protections and regulation of payouts, including the following:

- Players must be 21 years of age or older;
- A player will be offered a full refund of his or her balance on the terminal if there is a breakdown of the terminal; and,
- The licensee must fund the initial seed pool, payouts must be paid exclusively from the pools of video race wagers, and payment of wins can only be paid by cash.

The bill imposes requirements on the licensee regarding handling of money from wagers. The bill requires the licensee to separate money received from wagers on video race terminals from money received from all other pari-mutuel wagers. The bill also requires the licensee to return proceeds of video race terminal tickets that are not redeemed within 1 year after the date of purchase as follows: 50% are retained by the licensee and 50% are provided to thoroughbred racing permitholders with an operating permit for use in purses or awards on live thoroughbred racing.

The bill requires DBPR to adopt rules to implement, administer, and regulate the operation of video race terminals, including rules related to recordkeeping, accounting, security, testing of video race

terminals, and technical requirements to ensure that the blended takeout from wagers on video race terminals is not more than 12 percent of the total wagers on video race terminals at the facility. The bill imposes a 2% tax for each licensee on the total amount of wagers placed at video terminals at the licensed facility. The bill also requires each licensee to pay a \$50,000 fee to DBPR upon authorization to operate video race terminals and annually thereafter. The bill requires the fee to be paid into the Pari-mutuel Wagering Trust Fund for DBPR and Florida Department of Law Enforcement to use for regulation, enforcement, and investigation of video race terminals.

New Slot Machine Licenses

Up to two new slot machine licenses may be issued under the provisions of s. 551.104(2)(a)3. and 4., F.S. The facilities granted slot machine licenses under these subparagraphs may only offer 250 slot machines and 250 video race terminals after being granted a slot machine license and prior to October 1, 2018. These licensees may offer 750 slot machines and 750 video race terminals after being granted a license and after October 1, 2018.

A licensee who is granted a slot machine license under either of these two provisions may not offer designated player games, if the licensee also maintains a cardroom license.

New Limited Slot Machine License in a County Other Than Miami-Dade or Broward

The bill amends s. 551.104(2)(a)3., F.S., to permit the Division to approve an application for licensure to conduct slot machine gaming if the applicant's facility **is a licensed pari-mutuel facility** located in a county that:

- Has a population of at least 1.25 million people;
- Has at least 30 incorporated municipalities; and
- Has approved slot machines in a countywide referendum held after the effective date of the bill, concurrently with a presidential election;
- Is not Miami-Dade or Broward Counties.

To obtain the license, the applicant must:

- Pay the required license fees;
- Relinquish one pari-mutuel permit issued in accordance with ch. 550, F.S. to the state;
- Meet all other requirements of ch. 551, F.S., for licensure.

The relinquished pari-mutuel permit is void and shall not be reissued by the Division.

The Division may only grant the license to conduct slot machine gaming to this applicant if the license does not violate the provisions of the 2015 Compact authorized pursuant to s. 285.710(3)(b), F.S. The licensee granted a license to conduct slot machine gaming pursuant to s. 551.104(2)(a)3., F.S., is exempt from all live racing requirements set forth in chs. 550 and 551, F.S.

New Limited Slot Machine Permit in Miami-Dade County

The bill amends s. 551.104(2)(a)4., F.S., to permit the Division to approve an application for licensure to conduct slot machine gaming if the applicant's facility:

- Has been selected pursuant to requirements set forth in newly created ss. 551.1041 through 551.1044, F.S.;
- Is located in a county that as a population of at least 2.5 million people;
- A majority of voters in the county voted to allow slot machines before December 30, 2011; and
- A countywide referendum is held after the effective date of the bill, concurrently with a presidential election, which approves slot machines at such a facility.

To obtain the license, the applicant must:

- Pay the required license fees;
- Meet all other requirements of ch. 551, F.S., for licensure.

The Division may only grant the license to conduct slot machine gaming to this applicant if the license does not violate the provisions of the 2015 Compact, authorized pursuant to s. 285.710(3)(b), F.S. The licensee granted a license to conduct slot machine gaming pursuant to s. 551.104(2)(a)4., F.S., is exempt from all live racing requirements set forth in chs. 550 and 551, F.S., and must comply with ch. 550, F.S.

Selection of Limited Slot Machine Permitholder

The bill creates s. 551.1041, F.S., which provides for the authorization of a limited slot machine permitholder.

The Division may grant a slot machine license to a limited slot machine facility only if the majority of the electors in the county in which the facility will be located have passed a referendum allowing for slot machines prior to December 30, 2011, and passed a countywide referendum allowing slot machines at a limited slot machine facility after the effective date of the bill.

The bill creates s. 551.1042, F.S., providing a process by which the Division may select a limited slot machine facility. The Division may grant a slot machine license to an applicant that is best suited to operate the facility.

The bill creates s. 551.1043, F.S., providing criteria for the Division to use to select a limited slot machine facility. The Division shall evaluate proposals for selection as a limited slot machine facility based on set criteria.

At a minimum, the applicant must demonstrate:

- The capacity to increase tourism, generate jobs, and provide revenue to the local economy and the General Revenue Fund;
- A history of, or a bona fide plan for, involvement or investment in the community;
- A history of investment in the communities in which its previous developments have been located or propose a plan to increase community investment;
- That it has adequate capital to develop and maintain the facility in accordance to laws and rules and to meet financial and contractual agreements.
- Management expertise and experience in building and managing a similar facility;
- How it will integrate with local businesses, including restaurants, hotels, retail outlets, and impacted live entertainment venues;
- How the facility's design will integrate into the community;
- Its ability to develop a facility with high quality amenities that enhance the state's tourism industry and economy;
- The ability to generate substantial gross receipts and revenue for state and local governments.

The Division shall also base its evaluation on the applicant's ability to contribute to a decrease in the amount of gaming in the state. In order to meet this requirement the applicant must acquire eligible permits that total a minimum of five points under the Division's point system. The applicant may either actually acquire an eligible permit or acquire an eligible permit-contingent on the applicant's obtaining approval for a limited slot machine facility.

If the applicant's proposal is selected as the limited slot machine facility and receives a license, the applicant shall obtain and forfeit to the Division the acquired eligible permits. A forfeited permit is void and may not be reissued. A permitholder who transfers a permit under chapter 551, F.S., forfeits any right to conduct slot machine gaming at the facility.

The bill creates s. 551.1044, F.S., which requires the proposal, submitted in response to a request for proposals to include documents, statements and other information to illustrate the applicant's ability build and operate a slot machine license facility while improving the surrounding community.

A nonrefundable proposal fee of \$1 million must be submitted with the proposal for a limited slot machine facility license. The Division shall deposit the fee into the Pari-mutuel Wagering Trust Fund to be used to defray costs associated with the review and investigation of the proposal and to conduct a background investigation on the applicant. If the cost to complete the review and investigation exceeds \$1 million, the applicant must pay the additional amount to the Division within 30 days after the receipt of a request for additional payment.

An incomplete proposal for a limited slot machine facility is grounds for the Division to deny the proposal. The Division shall refund 70 percent of the proposal fee within 30 days after the denial of an incomplete proposal.

The bill amends s. 550.054(1), F.S., to require an applicant that has been selected to receive a license to conduct slot machine gaming to submit an application to conduct pari-mutuel operations. The applicant shall receive the permit. The permitholder is prohibited from operating live racing or games, shall be designated as a limited slot machine permitholder, and is exempt from all live racing requirements in chs. 550, 551, and 849, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 285.710, F.S., ratifying and approving the Gaming Compact between the Seminole Tribe of Florida and the State of Florida; superseding a prior compact; directing the Governor to cooperate with the Tribe in seeking approval of the compact from the United States Secretary of the Interior; expanding the games authorized to be conducted and the counties in which such games may be offered; providing for a portion of the amount paid by the Tribe to the state to be designated as the thoroughbred purse pool share.

Section 2 amends s. 285.710, F.S., correcting a citation.

Section 3 amends s. 550.002, F.S., updating the definition of "full schedule of races" and defining a "video race terminal."

Section 4 amends s. 550.01215, F.S., revising provisions for applications for pari-mutuel operating licenses; authorizing a greyhound racing permitholder to specify certain information on its application; authorizing a greyhound racing permitholder to receive an operating license to conduct pari-mutuel wagering activities at another permitholder's greyhound racing facility; authorizing the Division to approve changes in racing dates for greyhound racing permitholders under certain circumstances; providing requirements for licensure of certain jai alai permitholders; deleting a provision for conversion of certain converted permits to jai alai permits.

Section 5 amends s. 550.0251, F.S.; requiring the Division to annually report to the Governor and the Legislature; specifying requirements for the content of the report.

Section 6 amends s. 550.054, F.S., requiring the Division to revoke a pari-mutuel wagering operating permit under certain circumstances; prohibiting issuance or approval of new pari-mutuel permits after a specified date; providing exceptions; authorizing a permitholder to apply to the Division to place a permit in inactive status; revising provisions that prohibit transfer or assignment of a pari-mutuel permit; prohibiting transfer or assignment of a pari-mutuel permit or license under certain conditions; prohibiting relocation of a pari-mutuel facility, cardroom, or slot machine facility or conversion of pari-mutuel permits to a different class; providing for an exception; deleting provisions for certain converted permits.

Section 7 repeals s. 550.0555, F.S., relating to the relocation of greyhound racing permits.

Section 8 repeals s. 550.0745, F.S., relating to the conversion of pari-mutuel permits to summer jai alai permits.

Section 9 amends s. 550.0951, F.S., deleting provisions for specified tax credits for a greyhound racing permitholder; revising the tax on handle for live greyhound racing and intertrack wagering if the host track is a greyhound track; requiring a tax on handle and fees for video racing terminal licensees; providing for use of the fees by the DBPR and the Department of Law Enforcement.

Section 10 amends s. 550.09511, F.S., conforming a cross-reference.

Section 11 amends s. 550.09512, F.S., providing for the revocation of certain harness horse racing permits; specifying that a revoked permit may not be reissued.

Section 12 amends s. 550.09514, F.S., deleting certain provisions that prohibit tax on handle until a specified amount of tax savings have resulted; revising purse requirements of a greyhound racing permitholder that conducts live racing.

Section 13 amends s. 550.09515, F.S., providing for the revocation of certain thoroughbred racing permits; specifying that a revoked permit may not be reissued; removing an obsolete provision.

Section 14 amends s. 550.1625, F.S., deleting the requirement that a greyhound racing permitholder pay the breaks tax.

Section 15 repeals s. 550.1647, F.S., relating to unclaimed tickets and breaks held by greyhound racing permitholders.

Section 16 amends s. 550.1648, F.S., revising requirements for a greyhound racing permitholder to provide a greyhound adoption booth at its facility; requiring sterilization of greyhounds before adoption; authorizing the fee for such sterilization to be included in the cost of adoption; defining the term "bona fide organization that promotes or encourages the adoption of greyhounds".

Section 17 creates s. 550.2416, F.S.; requiring injuries to racing greyhounds to be reported within a certain timeframe on a form adopted by the Division; requiring such form to be completed and signed under oath or affirmation by certain individuals; providing penalties; specifying information that must be included in the form; requiring the Division to maintain the forms as public records for a specified time; specifying disciplinary action that may be taken against a licensee of the DBPR who fails to report an injury or who makes false statements on an injury form; exempting injuries to certain animals from reporting requirements; requiring the Division to adopt rules;

Section 18 amends s. 550.26165, F.S., conforming a cross-reference.

Section 19 amends s. 550.334, F.S., revising a requirement for quarter horse racing permitholders to conduct intertrack wagering.

Section 20 amends s. 550.3345, F.S., revising provisions for a permit previously converted from a quarter horse racing permit to a limited thoroughbred racing permit.

Section 21 amends s. 550.3551, F.S., revising conditions for receiving and accept wagers on out-of-state broadcasts of races and games; deleting a requirement that a harness permitholder conduct a certain number of races; deleting a provision that limits the number of out-of-state races on which wagers are accepted by a greyhound racing permitholder.

Section 22 amends s. 550.375, F.S., conforming a cross-reference.

Section 23 amends s. 550.615, F.S., revising provisions relating to intertrack wagering.

Section 24 amends s. 550.6305, F.S., revising provisions requiring certain simulcast signals be made available to certain permitholders; providing for certain permitholders of a converted permit to accept wagers on certain rebroadcasts.

Section 25 amends s. 550.6308, F.S.; revising the number of days of thoroughbred horse sales required to obtain a limited intertrack wagering license; revising provisions for such wagering.

Section 26 amends s. 551.101, F.S., revising provisions that authorize slot machine gaming at certain facilities.

Section 27 amends s. 551.102, F.S., revising the definition of the terms "eligible facility" and "slot machine licensee" for purposes of provisions relating to slot machines.

Section 28 amends s. 551.104, F.S., revising provisions for approval of a license to conduct slot machine gaming; specifying that a greyhound racing permitholder is not required to conduct a full schedule of live racing to receive and maintain a license to conduct slot machine gaming.

Section 29 creates s. 551.1041, F.S.; authorizing the Division to grant a slot machine license to a limited slot machine facility under certain circumstances; providing requirements for a countywide referendum;

Section 30 creates s. 551.1042, F.S., authorizing the Division to grant a slot machine license to a limited slot machine facility under certain circumstances; requiring the Division to use a request for proposals process to select a limited slot machine facility; providing criteria, procedures, and deadlines for a request for proposals process.

Section 31 creates s. 551.1043, F.S., specifying the criteria for evaluation of proposals and selection of a limited slot machine facility; specifying conditions that disqualify an applicant from eligibility to be considered for selection as a limited slot machine facility.

Section 32 creates s. 551.1044, F.S., providing for the submission of proposals by applicants that are seeking selection as a limited slot machine facility; specifying the information that must be on or included with a proposal for a limited slot machine facility; providing that the Division is solely authorized to determine the information or documentation that must be included in a proposal; providing procedures for a proposal determined to be incomplete by the Division; requiring supplemental information regarding changes to information on the proposal; requiring a nonrefundable proposal fee; providing for refund of the fee under certain circumstances.

Section 33 creates s. 551.1055, F.S., providing for certain licensees to operate video race terminals; providing conditions for such operation; providing for rules; providing for distribution of certain unclaimed funds.

Section 34 amends s. 551.106, F.S., revising the tax rate on slot machine revenues.

Section 35 amends s. 551.114, F.S., revising the maximum number of slot machines that may be available; limiting the number of slot machines available for play at certain facilities; revising requirements for designated slot machine gaming areas; requiring certain greyhound racing permitholders to locate their slot machine gaming area in certain locations.

Section 36 amends s. 551.116, F.S., revising the times that a slot machine gaming area may be open.

Section 37 amends s. 551.121, F.S., allowing complimentary or reduced-cost alcoholic beverages to be served to persons playing slot machines.

Section 38 amends s. 849.086, F.S., revising definitions; defining the terms "designated player" and "designated player game"; exempting greyhound racing permitholders from a requirement that they conduct a minimum number of live races as a condition of cardroom licensure under certain conditions; requiring certain greyhound racing permitholders to conduct intertrack wagering on thoroughbred signals as a condition of cardroom licensure; revising times that a cardroom may operate; providing for the Division to authorize designated player games in certain cardrooms; providing requirements for such games; providing that such games may be authorized by the Division only if they would not trigger

a reduction in certain payments; deleting provisions relating to a referendum election for the transfer of certain cardroom gaming licenses.

Section 39 provides that Division shall revoke any permit to conduct pari-mutuel wagering if the permitholder has not conducted live events within the 24 month immediately preceding the effective date of this act, unless the permit was issued under s. 550.3345, F.S., or ss. 551.1041-551.1044, F.S., after meeting the requirements of s. 551.104(2)(a)4., F.S. A permit revoked under this section may not be reissued.

Section 40 provides severability.

Section 41 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The fiscal impact of this bill is indeterminate at this time. The bill has been referred to the Office of Economic & Demographic Research for assessment at a forthcoming Revenue Estimating Impact Conference. A similar measure, HB 1233 (2015), had an estimated significant recurring positive fiscal impact to the General Revenue Fund.

2. Expenditures:

The fiscal impact of this bill is indeterminate at this time. A similar measure, HB 1233 (2015), had an estimated significant negative recurring fiscal impact to the State Schools Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill amends s. 551.104, F.S., creating an additional way for pari-mutuel permitholders to obtain a slot machine license if the county in which the permitholder is located has conducted a referendum after the effective date of this bill. This could have an indeterminate negative fiscal impact on Palm Beach and Miami-Dade Counties. However, the bill does not require that the referendum be conducted. Should the county commission decide to conduct the referendum; the fiscal impact will be limited to costs for increased ballot size and advertising costs because the majority of the cost would be included in the cost of the Presidential Election.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill reduces current requirements for pari-mutuel wagering licensees, such as reduced requirements for operation by certain permitholders, and limited intertrack wagering licensees, it may reduce private sector costs through increased flexibility.

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:

Retroactive Legislation

The bill directs the Division to revoke permits that have not been used for the conduct of pari-mutuel wagering on horseracing, jai alai and greyhound racing, as defined by the bill, during the 24 months preceding the effective date of this bill.

Such permitholders may claim that the retroactive application of this provision violates the Contract Clause of art. I, s. 10, U.S. Constitution, which prohibits states from passing laws which impair contract rights. However, the U.S. Supreme Court has found that "a lottery grant is not in any sense a contract, within the meaning of the constitution of the United States, but is simply a gratuity and license, which the state, under its police powers, and for the protection of the public morals, may at any time revoke, and forbid the further conduct of the lottery."

Compensation Claims

The bill directs the Division to revoke permits under specific situations. One of the provisions provides for the revocation of permits issued before January 1, 2012, that have not been used for the conduct of pari-mutuel wagering. Such permitholders may claim that such revocation constitutes a taking warranting compensation.

The Fifth Amendment of the U.S. Constitution provides that private property shall not be taken for public use without just compensation. "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."⁹⁰ Thus, Florida courts have found no unconstitutional taking in the retroactive application of statutes requiring revocation of certain occupational licenses and licenses to carry concealed firearms if the licensee was a convicted felon because such licensure is a privilege, not a vested right.⁹¹

As to pari-mutuel wagering, "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right."⁹² Likewise, the Florida Supreme Court has found that "[a]uthorized gambling is a matter over which the state may exercise greater control and exercise its police power in a more arbitrary manner"⁹³ Thus, the Florida Supreme Court found that, unlike permits to construct a building, "[i]t is doubtful if we can agree with counsel in concluding that a racing permit is a vested interest or right and after once granted cannot be changed."⁹⁴

Furthermore, compensation may not be warranted if the Legislature is deemed to have exercised its police powers, rather than powers of eminent domain.⁹⁵ "[T]he Government as condemner may not be required to compensate a condemnee for elements of value that the Government has created, or that it might have destroyed under the exercise of governmental authority other than the power of eminent domain."⁹⁶ Thus, the loss of licenses to sell alcoholic beverages, for example, is not compensable.⁹⁷

⁹⁰ *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

⁹¹ *See, e.g., Crane v. Department of State, Div. of Licensing*, 547 So.2d 266, 267 (Fla. 3rd DCA 1989), citing *Mayo v. Market Fruit Co. of Sanford*, 40 So.2d 555, 559 (Fla. 1949).

⁹² *Solimena v. State, Dept. of Business Regulation, Division of Pari-Mutuel Wagering*, 402 So.2d 1240 (Fla. 3rd DCA 1981).

⁹³ *Hialeah Race Course v. Gulfstream Park Racing Ass'n*, 37 So.2d 692, 694 (Fla. 1948).

⁹⁴ *State ex rel. Biscayne Kennel Club v. Stein*, 130 Fla. 517, 520 (Fla. 1938).

⁹⁵ *City of Miami Springs v. J.J.T.*, 437 So.2d 200 (Fla. 3rd DCA 1983)("even the complete prohibition of a previously lawful and existing business does not constitute a taking where the owner is not deprived of all reasonable use of his property, as long as the prohibition promotes the health, safety and welfare of the community and is thus a valid exercise of the police power.").

⁹⁶ *U. S. v. Fuller*, 409 U.S. 488, 491-492, 93 S.Ct. 801, 804 (U.S. Ariz.1973).

⁹⁷ *See, e.g., Yates v. Mulrooney*, 281 N.Y.S. 216, 219 (N.Y. App. Div. 1935); *Mugler v. Kansas*, 123 U.S. 623, 668-70 (1887).

Similar arguments have been made in states where pari-mutuel wagering has been prohibited after being licensed for many years. When Massachusetts banned greyhound racing by constitutional amendment in 2008, a licensed and operating dog track challenged the ban as a taking. The Supreme Judicial Court of Massachusetts rejected the argument, finding "[T]he plaintiffs here have no compensable property interest in their racing licenses."⁹⁸

If revoked permits are found to be a taking warranting compensation, just compensation equals the fair market value of the permit at the time of revocation. The fair market value of non-operating permits is uncertain. Such permits are a prerequisite to licensure for pari-mutuel wagering and, by themselves, do not appear to vest the holder with any rights. There are no application fees to receive a permit for pari-mutuel wagering and no fees to retain such a permit. Permits may not be transferred without state approval. While a pari-mutuel wagering permit is one pre-requisite to licensure to conduct cardrooms and slot machines, it is not the only pre-requisite. Not all permit holders may be able to obtain a license to conduct pari-mutuel wagering events, which would require adequate zoning and facilities.

B. RULE-MAKING AUTHORITY:

The bill provides DBPR rulemaking authority to adopt rules for the reporting of greyhound injuries and to define the term "injury."

C. DRAFTING ISSUES OR OTHER COMMENTS:

Substantive Drafting Issues:

Section 4, Line 419: To be uniform with the provision for revocation below, a date could be inserted, after June 30, 2012 or before July 1, 2016, depending on the intent of the provision.

Section 9, Line 769: The words "who does not pay tax" can be changed to "who has not paid tax".

Section 9, Line 771: A date should be indicated for determining the failure to pay tax on live handle based on the change in law that does not require live racing. (Insert "prior to July 1, 2016" after "months".)

Section 22, Lines 1440-1519: Based on the decoupling of greyhound, quarter horse, harness and some thoroughbred permit holders, it is unclear whether those permit holders who no longer conduct live racing will be limited by their former status as a particular type of permit holder when conducting intertrack wagering.

Section 26, Line 1682: The word "does" should be changed to "would".

Section 26, Line 1705: The word "does" should be changed to "would".

Section 36, Lines 2442-2445: This language needs to be clarified or removed because it is partially repetitive of the language in lines 2461-2477 with the exception of the exemption for facilities "licensed in accordance with 551.104(2)(a)4.", which could be added. The later more specific provision should control.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2016, the Regulatory Affairs Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments merge PCB 16-01 (Gaming Compact Between the Seminole Tribe of Florida and the State of Florida) into this bill, providing that the 2015 Compact will be ratified should this bill become law, and amends the effective date of the bill to provide that the bill shall become effective upon becoming law.

⁹⁸ *Carney v. Attorney General*, 451 Mass. 803 (2008).