

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB COM 24-02 Fees  
**SPONSOR(S):** Commerce Committee  
**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee	15 Y, 2 N	Thompson	Hamon

### SUMMARY ANALYSIS

The Florida Gaming Control Commission (Commission) is responsible for exercising all regulatory and executive powers of the state with respect to gambling, excluding the state lottery. Generally, fantasy sports contests are any of a number of games that permit a person to pay an entry fee and play either a virtual game or a virtual season of a sport based on the performance statistics of real sports players. Currently, there is no constitutional, statutory, or regulatory framework expressly allowing for fantasy contests to be conducted in Florida.

PCB COM 24-01 is a linked bill that authorizes certain fantasy sports contests. PCB COM 24-01 creates the "Fantasy Sports Contest Amusement Act" (Act), which authorizes fantasy sports contests to be offered by contest operators or noncommercial contest operators in which a contest participant manages a fantasy or simulation sports team composed of athletes from professional sports organizations.

The bill, PCB COM 24-02, imposes license fees on certain fantasy sports contest operators who offer fantasy sports contests to members of the public in the state. Specifically, the bill requires contest operators to pay an initial license application fee of \$500,000 and renewal fees of \$250,000 annually. Such fees:

- May not exceed 10 percent of the difference between the amount of entry fees collected by a contest operator from the operation of fantasy sports contests in this state, and the amount of cash or cash equivalents paid to contest participants in this state.
- Do not apply to individuals who act as noncommercial contest operators, who collect and distribute entry fees totaling no more than \$1,500 per season or \$10,000 annually, and who meet other specified requirements. The fees are to be paid to the Commission and deposited in the Pari-mutuel Wagering Trust Fund.

The bill:

- Requires fees for state and federal fingerprint processing and retention to be paid by license applicants;
- Requires the state cost for fingerprint processing to meet certain requirements;
- Authorizes the Commission to charge a \$2 handling fee for each set of fingerprints submitted for a contest operator license; and
- Requires such fees collected by the Commission to be deposited into the Pari-mutuel Wagering Trust Fund.

The bill appears to have an indeterminate positive fiscal impact on state government, and no fiscal impact on local government.

The bill is effective on the same date that PCB COM 24-01 or similar legislation takes effect, if adopted in the same legislative session or any extension, and becomes law.

**This bill imposes and authorizes new state fees, requiring a two-thirds vote of the membership of the House. See Section III.A.2. of the analysis.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### **General Overview of Gaming in Florida**

Gambling is generally prohibited in Florida, unless specifically authorized. Section 7, Art. X, of the Florida Constitution prohibits lotteries, other than pari-mutuel pools, from being conducted in Florida. Chapter 849, F.S., includes prohibitions against slot machines, keeping a gambling house and running a lottery. However, a constitutional amendment approved by voters in 1986 authorized state-operated lotteries, and a constitutional amendment in 2004 authorized slot machines in Miami-Dade and Broward Counties.

The following gaming activities are also authorized by law and regulated by the state:

- Pari-mutuel<sup>1</sup> wagering;<sup>2</sup>
- Gaming on tribal reservations in accordance with the Indian Gaming and Regulatory Act and the 2010 Gaming Compact with the Seminole Tribe of Florida;
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;<sup>3</sup> and
- Cardrooms<sup>4</sup> at certain pari-mutuel facilities.

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,<sup>5</sup> bingo,<sup>6</sup> charitable drawings,<sup>7</sup> game promotions (sweepstakes),<sup>8</sup> bowling tournaments,<sup>9</sup> and skill-based amusement games and machines at specified locations.<sup>10</sup>

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 prizes are prohibited slot machines.<sup>11</sup>

In 2015, the legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida's limitations on gambling and prevent the expansion of casino-style gambling. The legislature clarified regulations related to 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.<sup>12</sup>

#### **Florida Gaming Control Commission**

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<sup>1</sup> "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. See s. 550.002(22), F.S.

<sup>2</sup> See ch. 550, F.S., relating to the regulation of pari-mutuel activities.

<sup>3</sup> See FLA. CONST., art. X, s. 23, and ch. 551, F.S.

<sup>4</sup> S. 849.086(2)(c), F.S., defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."

<sup>5</sup> S. 849.085, F.S.

<sup>6</sup> S. 849.0931, F.S.

<sup>7</sup> S. 849.0935, F.S.

<sup>8</sup> S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

<sup>9</sup> S. 849.141, F.S.

<sup>10</sup> S. 546.10, F.S.

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

<sup>12</sup> S. 546.10, F.S.

The Florida Gaming Control Commission (Commission) is a five-member regulatory body that is responsible for exercising all regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts, and other forms of gambling authorized by the State Constitution or law, excluding the state lottery.<sup>13</sup> The Commission is also the State Compliance Agency responsible for monitoring compliance with the provisions of the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.<sup>14</sup>

The Division of Gaming Enforcement (Division) is a criminal justice agency<sup>15</sup> tasked with the enforcement of Florida's gambling laws to combat illegal gambling activities.<sup>16</sup> While every law enforcement officer in the state of Florida has the authority to make arrests for violations of Florida's gambling laws, the Division is the first law enforcement agency with illegal gambling as its primary responsibility.<sup>17</sup>

The Division director and all investigators are certified and designated law enforcement officers, and have the power to detect, apprehend, and arrest for any alleged violation of the state's gambling laws, or any law of this state.<sup>18</sup> Such law enforcement officers may enter upon any premises at which gaming activities are taking place in the state for the performance of their lawful duties and may take with them any necessary equipment, and such entry does not constitute a trespass.<sup>19</sup>

The officers have the authority, without warrant, to search and inspect any premises where the violation is alleged to have occurred or is occurring. Investigators employed by the Commission are required to have access to, and the right to inspect, premises licensed by the Commission, to collect taxes and remit them to the officer entitled to them, and to examine the books and records of all persons licensed by the Commission.<sup>20</sup>

The Division and its investigators are specifically authorized to seize, store, and test any contraband<sup>21</sup> in accordance with the Florida Contraband Forfeiture Act.<sup>22</sup>

According to the Commission, the Division:<sup>23</sup>

- Participates in direct enforcement activities involving proactive investigations initiated by reports of illegal gambling, confidential sources, and investigative leads. Upon obtaining sufficient evidence, agents execute search warrants, resulting in arrests and the seizure of illegal gambling devices and contraband.
- Serves as a valuable resource for state and local law enforcement partners, providing expert guidance on the intricacies of Florida's gambling laws and regulations. Agents share their knowledge and experience, assisting other law enforcement agencies in identifying illegal gambling activities, gathering evidence, and building strong cases for prosecution. This collaborative approach ensures that illegal gambling operations are effectively investigated and disrupted.

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<sup>13</sup> See ss. 16.71-16.716, F.S.

<sup>14</sup> S. 285.710, F.S.

<sup>15</sup> S. 16.711(1), F.S.

<sup>16</sup> Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023*, pg. 6, <https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf> (last visited Jan. 2, 2024).

<sup>17</sup> Florida Gaming Control Commission, *Gaming Enforcement*, <https://flgaming.gov/enforcement/> (last visited Jan. 3, 2024).

<sup>18</sup> S. 16.711(3), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> The term "contraband" has the same meaning as the term "contraband article" in s. 932.701(2)(a)2, F.S., which is defined as "any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, Internet domain name, gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was obtained, received, used, attempted to be used, or intended to be used in violation of the gambling laws of the state, including any violation of chapter 24, part II of chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849."

<sup>22</sup> S. 16.711(4), F.S.

<sup>23</sup> *Id.*

The Florida Department of Law Enforcement (FDLE) is required to provide assistance in obtaining criminal history information relevant to investigations required for honest, secure, and exemplary gaming operations, and such other assistance as may be requested by the Commission's executive director and agreed to by the FDLE's executive director. Any other state agency, including the Department of Business and Professional Regulation (DBPR) and the Department of Revenue (DOR), must, upon request, provide the Commission with any information relevant to any investigation conducted as described above, and the Commission must reimburse any agency for the actual cost of providing any such assistance.<sup>24</sup>

## Fantasy Sports Contests

Generally, fantasy sports contests are any of a number of games that permit a person to pay an entry fee and play either a virtual game or a virtual season of a sport based on the performance statistics of real sports players. The player acts as both general manager and field manager of their team by building a roster through a draft and trades. Players make lineups in pursuit of statistically beating other players. The term "commissioner" has been used in the context of fantasy leagues to denote a person who manages a fantasy league, establishes league rules, resolves disputes over rule interpretations, publishes league standings, or selects the Internet service for publication of league standings.<sup>25</sup>

The two most-prominent fantasy sports in the U.S are fantasy baseball and fantasy football.<sup>26</sup> Participation in fantasy sports contests grew dramatically in the 1990s due to greater access to game and player statistics through growing access to the Internet.<sup>27</sup>

Daily fantasy sports contests are an accelerated version of fantasy sports contests, which are played across a shorter period of time. For example, daily fantasy contests may be played over a single week in a season, rather than the entire season. Daily fantasy contests are typically played as "contests" which require an entry fee. The fee funds an advertised prize pool from which the fantasy contest operator (such as FanDuel or DraftKings) takes a percentage as revenue.<sup>28</sup> The legality of daily fantasy contests has been challenged in many states and jurisdictions, with some critics arguing that the contests more closely resemble proposition wagering on athlete performance than traditional fantasy contests.

The online fantasy sports contest industry is now a multi-billion dollar industry in the United States.<sup>29</sup> In 2022, an estimated 62.5 million people competed in fantasy contests in the United States and Canada.<sup>30</sup>

## Legality of Fantasy Sports Contests in Florida

Florida law does not specifically address fantasy sports contests. Currently, there is no constitutional, statutory, or regulatory framework expressly allowing for fantasy contests to be conducted in the State of Florida. Moreover, Florida courts have not addressed whether Florida's constitutional and statutory prohibitions on gambling apply to fantasy contests. Florida's Attorney General has opined in the past that some fantasy contests appear to violate state gambling laws.<sup>31</sup>

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<sup>24</sup> Section 16.711(5), F.S.

<sup>25</sup> See Bernhard & Eade, *Gambling in a Fantasy World: An Exploratory Study of Rotisserie Baseball Games*, 9 UNLV Gaming Research & Review Journal Issue 1, at 30, at <http://digitalscholarship.unlv.edu/grrj/vol9/iss1/3/> (last visited Feb. 9, 2024).

<sup>26</sup> Adam Augustyn, Britannica.com, *Fantasy sport*, <https://www.britannica.com/sports/fantasy-sport> (last visited Feb. 9, 2024).

<sup>27</sup> Ben Klayman, Reuters, *Technology spurs growth of fantasy sports in U.S.* (Sep. 24, 2008) <https://www.reuters.com/article/idUSTRE480039/> (last visited Feb. 9, 2024).

<sup>28</sup> Adam Kilgore, The Washington Post, *Daily fantasy sports Web sites find riches in Internet gaming law loophole*, (Mar. 27, 2015) [https://www.washingtonpost.com/sports/daily-fantasy-sports-web-sites-find-riches-in-internet-gaming-law-loophole/2015/03/27/92988444-d172-11e4-a62f-ee745911a4ff\\_story.html](https://www.washingtonpost.com/sports/daily-fantasy-sports-web-sites-find-riches-in-internet-gaming-law-loophole/2015/03/27/92988444-d172-11e4-a62f-ee745911a4ff_story.html).

<sup>29</sup> Curt Woodward, The Boston Globe, *Fantasy sports book gives insider view of DraftKings' explosion*, (Mar. 6, 2017) <https://www.bostonglobe.com/business/2017/03/06/fantasy-sports-book-gives-insider-view-draftkings-explosion/qntMQJiIW2IKhrBNXPx2SK/story.html> (last visited Feb. 9, 2024).

<sup>30</sup> Fantasy Sports & Gaming Association, *Industry Demographics*, <https://thefsga.org/industry-demographics/> (last visited Feb. 9, 2024).

<sup>31</sup> 91-03 Fla. Op. Att'y Gen. (1991).

Section 849.14, F.S., provides that a stake, bet, or wager of money or another thing of value placed "upon the result of any trial or contest of skill, speed, power, or endurance of human or beast" is unlawful. Receiving money or acting as the custodian or depository of money as part of such a stake, bet, or wager is also unlawful.

Section 849.25, F.S., Florida's anti-bookmaking statute, defines bookmaking as "the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever." The statute includes factors that are to be considered evidence of bookmaking, including charging a percentage on accepted wagers, receiving more than five wagers in a day, and receiving over \$500 in total wagers in a single day or over \$1500 in a single week.<sup>32</sup>

On January 8<sup>th</sup>, 1991, Florida Attorney General (AG) provided an advisory legal opinion<sup>33</sup> regarding whether participation in a fantasy sports league violated Florida's gambling laws. The opinion concluded that the operation of a fantasy league would violate s. 849.14, F.S., and that since the fantasy sports league's entry fee was used to make up the prizes, it qualified as a "stake, bet, or wager" under Florida law.<sup>34</sup> The AG stated that, "while the skill of the individual contestant picking the members of the fantasy team is involved, the prizes are paid to the contestants based upon the performance of the individual professional football players in actual games."<sup>35</sup>

The AG concluded that contests in which the skill of the contestant predominates over the element of chance, such as in certain sports contests, are not prohibited lotteries. As an example, he noted that golf and bowling tournaments were contests of skill and were not prohibited. He considered that "it might well be argued that skill is involved in the selection of a successful fantasy team by requiring knowledge of the varying abilities and skills of the professional football players who will be selected to make up the fantasy team."<sup>36</sup>

Recently, the Commission has issued cease and desist correspondence to various companies operating fantasy contests in the state concerning possible violations of Florida's gambling laws. The letters have generated controversy, concern, and interest from contest operators, elected officials, and the Seminole Tribe of Florida, which has entered into gaming compacts with the state.<sup>37</sup>

## Legality of Fantasy Sports in Federal Law

The federal Unlawful Internet Gambling Enforcement Act of 2006<sup>38</sup> (UIGEA) prohibits the processing of certain online financial wagering to prevent payment systems from being used in illegal online gambling. The UIGEA prohibits gambling businesses from knowingly accepting payments in connection with a "bet or wager" that involves the use of the Internet and that is unlawful under any federal or state law.

The UIGEA expressly states that participation in fantasy or simulation sports contests is not included in the definition of "bet or wager"<sup>39</sup> when certain conditions are met. For purposes of the UIGEA, participation in a fantasy or simulation sports contest is not a bet or wager when:

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<sup>32</sup> S. 849.25(1)(b), F.S.

<sup>33</sup> 91-03 Fla. Op. Att'y Gen. (1991).

<sup>34</sup> *Creash v. State*, 131 Fla. 111, 118 (Fla. 1938).

<sup>35</sup> 91-03 Fla. Op. Att'y Gen. (1991).

<sup>36</sup> *Id.* Also, a 1990 Florida Attorney General advisory legal opinion provides that a golf hole-in-one contest, which is an exercise of skill, with an entry fee where such fee does not go toward the purse or prize does not violate the state's gambling laws. 90-58 Fla. Op. Att'y Gen. (1990).

<sup>37</sup> See <https://www.floridatrend.com/article/38854/questions-swirl-around-fantasy-sports> (last visited Jan. 23, 2024).

<sup>38</sup> 31 U.S.C. § 5361-5366 (2006).

<sup>39</sup> 31 U.S.C. § 5362(1) (2006).

- Prizes and awards offered to winning participants are established and made known in advance of the game or contest and the value is not determined by the number of participants or amount of fees paid by the participants.
- Winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals.
- Winning outcomes are not based on the score, point spread, or any performance of any single sports team or combination of such teams or solely on a single performance of an individual athlete in a single sporting event.

Contest operators argue that they are legal under the UIGEA. In *Humphrey v. Viacom, Inc.*, the court determined that because the entry fee was paid "unconditionally," the owner did not participate, and the prizes were guaranteed and determined in advance, the fantasy contest entry fees were not "wagers" under the act.<sup>40</sup> However, although the UIGEA exempts fantasy and simulation sports contests from the application of the UIGEA, it does not make such contests legal generally. The UIGEA does not change or preempt any other federal or state law. As expressed in the Rule of Construction in the UIGEA, "no provision of this subchapter shall be construed as altering, limiting, or extending any federal or state law or tribal-state compact prohibiting, permitting, or regulating gambling within the United States."<sup>41</sup> Therefore, any other state or federal law could apply.

The federal Illegal Gambling Business Act of 1970 (IGBA)<sup>42</sup> defines an "illegal gambling business" as a gambling business that is in violation of the law of the state in which it is conducted, involves five or more persons who conduct or manage all or part of such business, and that has been in continuous operation for a period of more than 30 days or has a gross revenue of \$2000 in a single day. The IGBA specifically exempts savings promotion raffles and bingo games, lotteries, or other games of chance operated by certain non-profit corporations.<sup>43</sup> An employee or company that has violated the IGBA is subject to penalties including fines, forfeiture of profits and assets, and imprisonment for up to 5 years.

### **Fantasy Sports Contests in the 2021 Compact**

The Seminole Indian Tribe of Florida (Tribe) is a federally recognized Indian tribe whose reservations and trust lands are located in the State. A gaming compact between the Tribe and the state of Florida was executed by Governor Ron DeSantis and the Tribe on April 23, 2021 (2021 Compact). The 2021 Compact was approved by the U.S. Department of the Interior on August 6, 2021, and became effective upon the publication of notice in the Federal Register on August 11, 2021.<sup>44</sup>

Under the 2021 Compact, "fantasy sports contest" means a fantasy or simulation sports game or contest offered by a contest operator or a noncommercial contest operator in which a contest participant manages a fantasy or simulation sports team composed of athletes from a professional sports organization and that meets each of the following requirements:

- All prizes and awards offered to winning contest participants are established and made known to the contest participants in advance of the game or contest.
- All winning outcomes reflect the relative knowledge and skill of the contest participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events.
- No winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of such teams, solely on any single performance of an individual athlete or player in any single actual event, on a pari-mutuel event, as the term "pari-mutuel" is defined in s. 550.002, Florida Statutes, as of January 1, 2021, on a game of poker or other card game, or on the performances of participants in collegiate, high school, or youth sporting events.
- No casino graphics, themes, or titles, including, but not limited to, depictions of slot machine-style symbols, cards, dice, craps, roulette, or lotto, are displayed or depicted.

<sup>40</sup> *Humphrey v. Viacom, Inc.*, 2007 WL 1797648 (D.N.J. June 20, 2007).

<sup>41</sup> 31 U.S.C. § 5361(b) (2006).

<sup>42</sup> 18 U.S.C. § 1995 (1970).

<sup>43</sup> See 26 U.S.C. § 501.

<sup>44</sup> Fed. Register, Vol. 86, No. 153 at 44037.

The 2021 Compact allows the Tribe to offer fantasy sports contests at all their facilities. However, the 2021 Compact does not include fantasy sports contests in the games for which the Tribe is granted exclusivity to conduct in the state.

## 2021 Compact Litigation

The state received payments due under the 2021 Compact beginning October 2021. The U.S. District Court for the District of Columbia set aside the federal approval of the 2021 Compact on November 22, 2021. The Seminole Tribe continued making revenue sharing payments to the state through February 2022, and then discontinued all payments. Between October 2021 and February 2022, the state received five payments of \$37.5 million, totaling \$187.5 million.<sup>45</sup>

After the U.S. Supreme Court ordered a stay on the U.S. District Court for the District of Columbia ruling, revenue sharing payments from the Seminole Tribe to the state resumed in January 2024.<sup>46</sup> Currently, there is a proceeding pending in the U.S. Supreme Court challenging the legality of the 2021 Compact, but that court has not yet determined to accept the case.<sup>47</sup>

Litigation relating to the legality of the 2021 Compact is currently pending in the Florida Supreme Court,<sup>48</sup> challenging the off-reservation mobile sports betting authorized in the 2021 Compact and in Florida law<sup>49</sup> as a violation of the Florida Constitution (Article X, Section 30 to the Florida Constitution). The challenged actions include execution and ratification of the 2021 Compact and enactment of implementing legislation, as it relates to sports betting.

## Florida's Sunrise Act

Section 11.62, F.S., is Florida's sunrise review, which is called the Sunrise Act. The Sunrise Act states that regulation should not be adopted unless it is:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

In determining whether to regulate a profession or occupation, the Sunrise Act requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

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<sup>45</sup> See the review of the Indian Gaming Revenues by the Revenue Estimating Conference/Impact Conference at <http://www.edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf> (last visited Jan. 23, 2024). The Office of Economic and Demographic Research (EDR) is a research arm of the Legislature principally concerned with forecasting economic and social trends that affect policy making, revenues, and appropriations. At the request of the legislative committees or other members of an estimating conference, EDR conducts impact assessments of proposed policy changes. Often, EDR's estimates are incorporated in the committee bill analysis or fiscal note. In some cases, committees will request EDR to take a particular proposal to a consensus estimating conference to obtain an impact estimate that is formally agreed to by both houses of the Legislature and by the Governor's Office.

<sup>46</sup> The resumption of Indian Gaming Revenues will be reviewed by the Revenue Estimating Conference/Impact Conference.

<sup>47</sup> See Order in Pending Case, No. 23A315 (Oct. 25, 2023) in *West Flagler Associates, Ltd., et al. v. Haaland*, Application for Stay Denied with Statement of Justice Kavanaugh, 601 U.S. \_\_\_\_ (2023), available at [23A315 West Flagler Associates, Ltd. v. Haaland \(10/25/2023\) \(supremecourt.gov\)](https://www.supremecourt.gov/opinions/23a315) (last visited Feb. 9, 2024).

<sup>48</sup> *West Flagler Associates, et al., v. Ron D. DeSantis, et al.*, SC 2023-1333, Petition for Writ of Quo Warranto.

<sup>49</sup> See s. 285.710(13)(b)7., F.S.

- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The Sunrise Act requires proponents of legislation that propose new regulation on professions or occupations to provide the following information, **upon request**, by the agency proposed to have jurisdiction or the legislative committee to which the legislation is referred, to document the need for regulation:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding three years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation;
- The details of any previous efforts in this state to implement regulation of the profession or occupation; and
- Any other information the agency or the committee considers relevant to the analysis of the proposed legislation.

The Sunrise Act requires the agency proposed to have jurisdiction over the regulation to provide the Legislature with the following information:

- The resources required to implement and enforce the regulation;
- The technical sufficiency of the proposal, including its consistency with the regulation of other professions; and
- Any alternatives that may result in less restrictive or more cost-effective regulation.

In determining whether to recommend regulation, the legislative committee reviewing the proposal must assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

## **Proposed Changes**



The bill imposes license fees on certain fantasy sports contest operators<sup>50</sup> who offer fantasy sports contests for a cash prize to members of the public.

The bill requires contest operators to pay an initial license application fee of \$500,000 and renewal fees of \$250,000 annually. Such fees may not exceed 10 percent of the difference between the amount of:

- Entry fees collected by a contest operator from the operation of fantasy sports contests in this state; and
- Cash or cash equivalents paid to contest participants in this state.

The license fees do not apply to individuals who act as noncommercial contest operators by organizing and conducting fantasy or simulation sports contests in which:

- Contest participants are charged entry fees for the right to participate;
- Entry fees are collected, maintained, and distributed by the same natural person;
- The total entry fees collected, maintained, and distributed total no more than \$1,500 per season or \$10,000 per calendar year; and
- All entry fees are returned to the contest participants in the form of prizes.

The bill directs the Commission to require applicants for contest operator licensure to provide written evidence to the Commission of the proposed amount of entry fees and cash or cash equivalents to be paid to contest participants during the annual license period. Before a license renewal, a contest operator must:

- Provide written evidence to the Commission of the actual entry fees collected and cash or cash equivalents paid to contest participants during the previous period of licensure; and
- Remit to the Commission any difference in a license fee which results from the difference between the proposed amount of entry fees and cash or cash equivalents paid to contest participants, and the actual amounts collected and paid during the previous period of licensure.

The bill requires:

- Fees for state and federal fingerprint processing and retention to be borne by license applicants; and
- The state cost for fingerprint processing to meet the requirements of s. 943.053(3)(e), F.S., for records provided to persons or entities other than the specified exceptions.
  - The fee per record for criminal history information provided pursuant to s. 943.053(3)(e), F.S., is \$24 per name submitted.

The bill authorizes the Commission to charge a \$2 handling fee for each set of fingerprints submitted for a contest operator license.

The bill requires all fees collected by the Commission under s. 546.151, F.S., to be deposited into the Pari-mutuel Wagering Trust Fund.

The bill is effective on the same date that PCB COM 24-01 or similar legislation takes effect, if adopted in the same legislative session or any extension, and becomes law.

## B. SECTION DIRECTORY:

Section 1: Creates s. 546.151, F.S., relating to fees.

Section 2: Provides an effective date.

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<sup>50</sup> PCB COM 24-01 (Fantasy Sports Contest Amusement Act) defines the term “contest operator” to mean “a person or entity that offers fantasy sports contests for a cash prize to members of the public, but does not include a noncommercial contest operator in this state. The term “noncommercial contest operator” is defined to mean “a natural person who organizes and conducts a fantasy or simulation sports contest in which contest participants are charged entry fees for the right to participate; entry fees are collected, maintained, and distributed by the same natural person; the total entry fees collected, maintained, and distributed by such natural person do not exceed \$1,500 per season or a total of \$10,000 per calendar year; and all entry fees are returned to the contest participants in the form of prizes.” *Id.*

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Indeterminate. See Fiscal Comments

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

### D. FISCAL COMMENTS:

The bill may have an indeterminate positive fiscal impact on state funds and indeterminate negative economic impact on the private sector. The number of fantasy sports contest operators that may apply for an initial license and renewals annually thereafter is unknown.

The bill requires contest operators to pay to the Commission an initial license application fee of \$500,000 and renewal fees of \$250,000 annually. Such fees may not exceed 10 percent of the difference between the amount of:

- Entry fees collected by a contest operator from the operation of fantasy sports contests in this state; and
- Cash or cash equivalents paid to contest participants in this state.

The license fees do not apply to individuals who act as noncommercial contest operators by organizing and conducting fantasy or simulation sports contests in which:

- Contest participants are charged entry fees for the right to participate;
- Entry fees are collected, maintained, and distributed by the same natural person;
- The total entry fees collected, maintained, and distributed total no more than \$1,500 per season or \$10,000 per calendar year; and
- All entry fees are returned to the contest participants in the form of prizes.

The bill authorizes the Commission to charge a \$2 handling fee for each set of fingerprints submitted for a contest operator license.

The bill requires all fees collected by the Commission under the bill to be deposited into the Pari-mutuel Wagering Trust Fund.

According to the Commission, the bill will likely require:

- An estimate by the Revenue Estimating Conference, but provides that the bill will likely result in a positive fiscal impact to the Pari-Mutuel Wagering Trust Fund.<sup>51</sup>

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<sup>51</sup> The Florida Gaming Control Commission, Agency Analysis of 2024 SB 1566, p. 4-5 (Jan. 19, 2024).

- Configuration changes to the current licensing system and software, to add a new license category for fantasy contest operators.<sup>52</sup>

The Florida Department of Law Enforcement (FDLE) notes it has inquired of the Commission to obtain an estimate of the potential increase, if any, in additional screenings required by the bill, and that the fiscal impact to state government is currently indeterminate.<sup>53</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

##### 2. Other:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, the bill appears to implicate Art. VII, s. 19 of the Florida Constitution because the bill:

- Imposes license fees on certain fantasy sports contest operators who offer fantasy sports contests for a cash prize to members of the public in this state.
- Authorizes the Commission to charge a handling fee for each set of fingerprints submitted for a contest operator license.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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<sup>52</sup> *Id.* at 5.

<sup>53</sup> The Florida Department of Law Enforcement, Agency Analysis of 2024 SB 1566, p. 3 (Jan. 12, 2024).