

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 7075 PCB COM 23-05 Changes in Ownership of or Interest in Pari-mutuel Permits
SPONSOR(S): Commerce Committee, Giallombardo
TIED BILLS: **IDEN./SIM. BILLS:** SB 7044

FINAL HOUSE FLOOR ACTION: 109 Y's 5 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

HB 7075 passed the House on May 3, 2023, as SB 7044.

The Florida Gaming Control Commission (commission) is the regulatory body that is responsible for exercising all regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, and slot machine facilities. The Florida Pari-mutuel Wagering Act (Act) provides specific permitting and licensure requirements for the pari-mutuel industry. Pari-mutuel wagering activities are limited to operators who have received a permit from the commission, which is then subject to ratification by county referendum. Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities. Certain permitholders are authorized to operate cardrooms and slot machines at their facility.

The Act generally requires that any transfer or assignment of a permit receive prior approval by the commission, which must determine the eligibility of persons and entities to hold a permit. Similarly, if a permit is held by a corporation or business entity other than an individual, the transfer of ten percent or more of the stock or other evidence of ownership or equity in the permitholder may not be made without the prior approval of the transferee by the commission.

The Act restricts a pari-mutuel permitholder from holding a permit, or being issued an operating license to conduct pari-mutuel wagering, slot machine gaming, or the operation of a cardroom, if the permitholder did not hold an operating license for the conduct of pari-mutuel wagering for Fiscal Year 2020-2021. The Act exempts converted thoroughbred permits from this restriction.

The bill relaxes the provisions in the Act that restrict pari-mutuel permits and operating licenses from being held by anyone other than a permitholder that held an operating license in Fiscal Year 2020-2021.

Relating to permits, the bill allows a permit, for the conduct of pari-mutuel wagering and associated cardroom and slot machine licenses, to be held by a purchaser, transferee, or assignee of a valid permit to conduct pari-mutuel wagering, if approved by the commission before such purchase, transfer, or assignment, and provided that the commission does not approve or issue an additional permit for the conduct of pari-mutuel wagering.

Relating to cardrooms, the bill allows a purchaser, transferee, or assignee of a valid permit to be issued a license to operate a cardroom.

Relating to operating licenses, the bill authorizes the issuance of an operating license to an eligible purchaser, transferee, or assignee of a valid permit.

The bill does not appear to have a fiscal impact on state or local government. The bill may expand the sale and transfer market for pari-mutuel permitholders.

The bill is effective upon becoming law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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-mutuel¹ wagering;²
- 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;³ and
- Cardrooms⁴ at certain pari-mutuel facilities.

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,⁵ bingo,⁶ charitable drawings,⁷ game promotions (sweepstakes),⁸ bowling tournaments,⁹ and skill-based amusement games and machines at specified locations.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 prizes 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'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.¹²

¹ "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.

² *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.

³ *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.

⁴ 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."

⁵ S. 849.085, F.S.

⁶ S. 849.0931, F.S.

⁷ S. 849.0935, F.S.

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

⁹ S. 849.141, F.S.

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.

Amendment to Florida Constitution Prohibiting Racing of and Wagering on Greyhounds or Other Dogs

During the 2018 General Election, the voters approved an initiative constitutional amendment, Amendment 13, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs, which has been codified in the State Constitution as Article X, Section 32.¹³

Article X, Section 32 states:

Prohibition on racing of and wagering on greyhounds or other dogs.—The humane treatment of animals is a fundamental value of the people of the State of Florida. After December 31, 2020, a person authorized to conduct gaming or pari-mutuel operations may not race greyhounds or any member of the *Canis Familiaris* subspecies in connection with any wager for money or any other thing of value in this state, and persons in this state may not wager money or any other thing of value on the outcome of a live dog race occurring in this state. The failure to conduct greyhound racing or wagering on greyhound racing after December 31, 2018, does not constitute grounds to revoke or deny renewal of other related gaming licenses held by a person who is a licensed greyhound permitholder on January 1, 2018, and does not affect the eligibility of such permitholder, or such permitholder's facility, to conduct other pari-mutuel activities authorized by general law. By general law, the legislature shall specify civil or criminal penalties for violations of this section and for activities that aid or abet violations of this section.

As of January 1, 2021, wagering on live greyhound racing in Florida is completely prohibited. However, cardroom and slot machine facilities by such permitholders may continue to operate after the closure of racing activities.

Pari-mutuel Wagering

Since approximately 1931, pari-mutuel wagering has been authorized in Florida for jai alai, greyhound racing, and horseracing. These activities are overseen and regulated¹⁴ by the Division of Pari-Mutuel Wagering (division) at the Florida Gaming Control Commission (commission), which is housed within the Department of Legal Affairs, Office of the Attorney General.¹⁵ The commission is tasked with exercising all regulatory and executive powers of the state on all forms of gambling authorized by the State Constitution or law including pari-mutuel wagering, card rooms, slot machine facilities, and the oversight of gaming compacts under the federal Indian Gaming Regulatory Act but excluding state lottery games authorized by the State Constitution.¹⁶

Pari-Mutuel Wagering State Revenue

License fees and taxes collected by pari-mutuel wagering permitholders, including slot machine and cardroom permitholders, are deposited with the Chief Financial Officer, to the credit of the Pari-mutuel Wagering Trust Fund. Slot machine tax revenue is transferred from the Pari-mutuel Wagering Trust Fund to the Educational Enhancement Trust Fund to supplement public education funding statewide. Taxes collected by cardrooms are split between the Pari-mutuel Wagering Trust Fund and the General Revenue Fund.

Pari-Mutuel Wagering Live Performance Requirements

¹³ See the text of Amendment 13, now codified as art. X, s. 32, at

<http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S32> (last visited Apr. 20, 2023).

¹⁴ From 1932 to 1969, Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within the Department of Business Regulation, which, in 1993, became DBPR.

¹⁵ See ss. 16.71-16.716, F.S.

¹⁶ S. 16.712, F.S.

Currently, only thoroughbred permitholders are required to conduct live racing.¹⁷ Greyhound permitholders may not conduct live racing, and jai alai permitholders, harness horse racing permitholders, or quarter horse racing permitholders may elect not to conduct live racing or games.

A greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games:¹⁸

- Retains its permit;
- Is a pari-mutuel facility as defined in s. 550.002(23), F.S.;
- Is eligible, but not required, to be a guest track, and if the permitholder is a harness horse racing permitholder, is eligible to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305, F.S.; and
- Remains eligible for a cardroom license.

A permitholder or licensee may not conduct live greyhound racing or dogracing in connection with any wager for money or any other thing of value in the state. The division is authorized to deny, suspend, or revoke any permit or license in ch. 550, F.S., for conducting live greyhound racing or dogracing in violation of this provision. In addition to, or in lieu of, denial, suspension, or revocation of such permit or license, the division is authorized to impose a civil penalty of up to \$5,000. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.¹⁹

Pari-mutuel Wagering Permitting and Licensure

The Florida Pari-mutuel Wagering Act (Act)²⁰ provides specific permitting and licensing requirements for the conduct of the pari-mutuel industry.²¹ 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.²² Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities.²³ Certain permitholders are also authorized to operate cardrooms²⁴ and slot machines at their facility.²⁵

During Fiscal Year 2020-2021, the following 39 pari-mutuel permitholders were licensed to operate:²⁶

- Nineteen Greyhound Racing permits.
- Three Thoroughbred Horse Racing permits.
- One Harness Horse Racing permit.
- Six Quarter Horse Racing permits.
- Ten Jai-Alai permits.

The division may revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of the Act, or any administrative rule adopted by the division, and may impose a civil penalty against the permitholder or licensee up to \$1,000 for each offense.²⁷

¹⁷ S. 550.01215(1)(b)1., F.S.

¹⁸ *Id.*

¹⁹ S. 550.01215(1)(b)2., F.S.

²⁰ Ch. 550, F.S.

²¹ S. 550.054(1), F.S.

²² S. 550.054(2), F.S.

²³ S. 550.0115, F.S.

²⁴ S. 849.086, F.S.

²⁵ S. 551.104, F.S.

²⁶ Florida Gaming Control Commission, *Annual Report Fiscal Year 2021-2022*, <https://flgaming.gov/pmw/annual-reports/docs/AnnualReport-2021-2022--1st%20FGCC--20221206.pdf> (last visited Apr. 20, 2023.)

²⁷ S. 550.054(9)(b), F.S.

During Fiscal Year 2021-2022, the division issued 40 rulings and 14 consent orders, assessed fines totaling \$16,500 and imposed three license suspensions for violations.²⁸

Pari-Mutuel Wagering License Restrictions

The Act generally requires that any transfer or assignment of a permit receive prior approval²⁹ by the commission, which must determine the eligibility³⁰ of persons and entities to hold a permit. Similarly, if a permit is held by a corporation or business entity other than an individual, the transfer of ten percent or more of the stock or other evidence of ownership or equity in the permitholder may not be made without the prior approval of the transferee by the commission.³¹

The Act provides restrictions on which persons and entities (including but not limited to employees, officers and directors, partners, and owners of the permitholder) may hold permits, based on whether they are of “good moral character,” or have been convicted of a disqualifying felony³² or for bookmaking.³³

The Act restricts pari-mutuel permitholders from being issued an operating license to conduct pari-mutuel wagering, slot machine gaming, or the operation of a cardroom if the permitholder did not hold an operating license for the conduct of pari-mutuel wagering for Fiscal Year 2020-2021.³⁴

The Act restricts pari-mutuel permitholders from holding a permit to conduct pari-mutuel wagering and associated cardroom or slot machine licenses³⁵ unless the permitholder, other than a limited thoroughbred permitholder, held an operating license for the conduct of pari-mutuel wagering for Fiscal year 2020-2021.³⁶

The Act restricts cardroom licenses from being issued to any permitholder, other than a limited thoroughbred permitholder, if the permitholder did not hold an operating license for Fiscal Year 2020-2021.³⁷

The Act specifies that permits held on January 1, 2021 are deemed valid, but new permits for pari-mutuel wagering may not be approved or issued.³⁸

The commission is required to revoke the permit of any permitholder, other than a limited thoroughbred permitholder, who did not hold an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021. A permit revoked under this provision is void and may not be reissued.³⁹

²⁸ *Id.*

²⁹ There is one exception to the prior-approval requirement in s. 550.054(11)(a), F.S., which is that the holder of a permit converted to a jai alai permit “may lease or build anywhere within the county in which its permit is located.” As of 2021, such conversions are prohibited. *See* s. 550.054(15)(d), F.S.

³⁰ *See* s. 550.1815, F.S.

³¹ *See* s. 550.054(11), F.S.

³² Pursuant to s. 550.1815(1)(b), F.S., the following are disqualifying felonies: (1) a felony in Florida; (2) any felony in any other state which would be a felony if committed in Florida under the laws of this state; (3) any felony under the laws of the United States; or (4) a felony under the laws of another state if related to gambling which would be a felony under Florida law if the offense was committed in Florida.

³³ The term “bookmaking” is defined in s. 849.25, F.S., to mean “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.”

³⁴ S. 550.01215(1)(d), F.S.

³⁵ Under s. 551.114(4), F.S., designated slot machine gaming areas must be located at the address specified in the licensed permitholder's slot machine license issued for Fiscal Year 2020-2021.

³⁶ S. 550.054(15)(a), F.S.

³⁷ S. 849.086(5)(c), F.S.

³⁸ S. 550.054(15)(c), F.S.

³⁹ S. 550.054(9)(a), F.S.

Recent Activities

In December 2022, West Flagler Associates, Ltd. applied⁴⁰ to the commission to transfer its pari-mutuel permit #155⁴¹ and associated licenses to conduct pari-mutuel wagering, slot machine gaming, and operate a cardroom, to Wind Creek Miami, LLC, a wholly owned subsidiary of PCI Gaming Authority, an unincorporated chartered instrumentality of the Poarch Band of Creek Indians. The commission did not approve the transfer of the permit because Wind Creek Miami, LLC did not hold an operating license for the conduct of pari-mutuel wagering for Fiscal Year 2020-2021 as required by the Act.⁴²

In February 2023, the commission conditionally approved the acquisition of West Flagler Associates, Ltd.'s permit after PCI Gaming Authority substituted Gretna Racing LLC as the purchaser of pari-mutuel permit #155 and the accompanying pari-mutuel, slot machine, and cardroom licenses.⁴³ Gretna Racing LLC did hold an operating license for pari-mutuel wagering and for the operation of a cardroom for Fiscal Year 2020-2021.⁴⁴

Prior to 2021, Debary Real Estate Holdings, LLC, Jefferson County Kennel Club, and North American Racing Association held pari-mutuel wagering permits, but did not possess an operating license for the conduct of pari-mutuel wagering for Fiscal Year 2020–2021. Accordingly, the commission issued notices of intent to revoke their permits, pursuant to the restrictions in the Act. The three entities have challenged the commission's proposed agency action by filing petitions for formal administrative hearings that are currently being litigated at the Division of Administrative Hearings.⁴⁵

Proposed Changes

The bill relaxes the provisions in the Act that restrict pari-mutuel permits and operating licenses from being held by anyone other than a permitholder that held an operating license in Fiscal Year 2020-2021.

Specifically, relating to permits, the bill allows a permit for the conduct of pari-mutuel wagering and associated cardroom and slot machine licenses, to be held by a purchaser, transferee, or assignee of a valid permit to conduct pari-mutuel wagering, if approved by the commission before such purchase, transfer, or assignment, and provided that the commission does not approve or issue an additional permit for the conduct of pari-mutuel wagering.

Relating to cardrooms, the bill allows a purchaser, transferee, or assignee of a valid permit to be issued a license to operate a cardroom.

Relating to operating licenses, the bill authorizes the issuance of an operating license to an eligible purchaser, transferee, or assignee of a valid permit.

The bill becomes effective upon becoming a law.

⁴⁰ Florida Gaming Control Commission, Meetings Archive, *Discussion of application for ownership transfer 4.1 2022-048451 West Flagler Associates, LTD* (Dec. 1, 2022), <https://flgaming.gov/meetings/archive/> (last visited Apr. 19, 2023).

⁴¹ Florida Gaming Control Commission, *Tracks and Frontons, Permit Holders List 2021-2022, Flagler Dog Track and Magic City Casino, Permit No. 155*, <https://flgaming.gov/pmw/tracks-frontons/> (last visited Apr. 19, 2023).

⁴² S. 550.01215(1)(d), F.S., also prohibits the issuance of an operating license for the conduct of pari-mutuel wagering, slot machine gaming, or the operation of a cardroom, if the permitholder did not hold an operating license to conduct pari-mutuel wagering for Fiscal Year 2020-2021. Section 849.086(5)(c), F.S., also prohibits the issuance of a cardroom license under the same restrictions.

⁴³ Florida Gaming Control Commission, Meetings Archive, *Discussion of application for ownership transfer 2.1. 2022-048451 West Flagler Associates, LTD 3. Discussion of recommended orders* (Feb. 8, 2023), <https://flgaming.gov/meetings/archive/> (last visited Apr. 19, 2023).

⁴⁴ Florida Gaming Control Commission, *Permit Holder Operating Licenses 2022-2023, Gretna Racing, LLC (542)*, <https://flgaming.gov/pmw/tracks-frontons/permitholder-operating-licenses-2022-2023/> (last visited Apr. 19, 2023).

⁴⁵ Florida Gaming Control Commission, *Annual Report Fiscal Year 2021-2022, Pending Litigation*, <https://flgaming.gov/pmw/annual-reports/docs/AnnualReport-2021-2022--1st%20FGCC--20221206.pdf> (last visited Apr. 20, 2023).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Relaxing restrictions on eligibility for pari-mutuel wagering operating licensure may expand the market related to the sale and transfer of such licenses.

D. FISCAL COMMENTS:

None.