

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1830

SPONSOR: Senator Smith

SUBJECT: Indian Reservations

DATE: March 29, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill exempts the Miccosukee Tribe of Indians from the state’s civil and criminal jurisdiction over Indians or other persons within reservations of the Miccosukee Tribe.

The adoption of retrocession by the State of Florida must still occur by the federal government, in order for this legislation to take effect.

This bill substantially amends section 285.16 of the Florida Statutes.

II. Present Situation:

State Statutory Authority

Since 1961, statutory authority has provided that the State has jurisdiction over criminal offenses committed by or against Indians or others on Indian lands, and also over civil actions between Indians or others on Indian reservations.¹ In *Hall v. State*, 762 So.2d 936, 937, even where an accident occurred on land that was owned and maintained by a federal agency, as the land itself was contained in the Big Cypress Indian Reservation, and therefore state recognized Indian land, the court recognized the state’s authority to properly charge vehicular homicide.

History of Federal Jurisdiction

Article 1, s. 8 of the Constitution of the United States grants Congress the authority to “regulate Commerce...with the Indian tribes.” Based in part on this provision, and in part on the near-exclusive authority of the federal government to engage in foreign policy, courts historically regarded Indian tribal lands, being the territories of sovereign nations, as beyond the jurisdiction

¹ s. 285.16, F.S.

of state law to regulate.² Congress has exclusive and plenary authority over Indian affairs, and, as such, states may only exercise jurisdiction over Indian lands if Congress expressly authorizes them to do so.³

Congress authorized states to exercise jurisdiction over Indian lands in 1953, when it enacted Public Law 83-280 (PL 280).⁴ This law required five enumerated states, titled the mandatory jurisdictions, to assume full civil and criminal jurisdiction over Indian reservations within their borders.⁵ In 1968, Congress significantly amended PL 280. The amendments require a tribe to consent prior to a state assuming jurisdiction over tribal lands, not to be applied retroactively. Nine optional jurisdictions, including Florida, assumed jurisdiction pursuant to PL 280 prior to the 1968 tribal consent requirement. Only one, Utah, assumed jurisdiction after the requirement, in 1971.

Additionally, the 1968 amendments authorize the federal government to accept a retrocession by a state of any or all jurisdiction that state previously assumed.⁶ Pursuant to this provision, then President Johnson issued an Executive Order authorizing the Interior Secretary, after consultation with the Attorney General, to accept any such retrocessions by notice published in the Federal Register, specifying the extent and effect of the retrocession.⁷

Criminal Jurisdiction

The federal Indian Major Crimes Act subjects Indians who commit certain enumerated crimes against another Indian or anyone on an Indian reservation to federal jurisdiction and penalties, such as for murder, manslaughter, kidnapping, rape, various assaults, and robbery. Offenses that are not enumerated in federal law are punishable in accordance with state law in which the offense was committed.⁸

Further, the federal General Crimes Act provides for federal jurisdiction over other crimes as between Indians and non-Indians on Indian reservations, with state law applying where federal law does not. However, the General Crimes Act expressly provides that it does not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe. Accordingly, crimes committed by an Indian against another Indian of the same tribe, while on that tribe's lands, are generally within the jurisdiction of that tribe and not the state or federal government.⁹

² See *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); See also *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

³ See *Washington v. Yakima Indian Nation*, 439 U.S. 463 (1979); See also *United States v. Wheeler*, 534 U.S. 303 (1978); See also *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973); See also *United States v. Daye*, 696 F.2d 1305 (11th Cir. 1983).

⁴ 67 Stat. 588, currently codified as extensively amended at 18 U.S.C. § 1162 and 28 U.S.C. § 1360.

⁵ The original five mandatory jurisdictions were California, Minnesota, Nebraska, Oregon and Wisconsin. Alaska was added as a sixth upon its admission to the Union in 1959. See Pub. L. 85-508, 72 Stat. 339.

⁶ See 25 U.S.C. § 1323 (a).

⁷ See Executive Order No. 11435, 33 F.R. 17339 (Nov. 21, 1968).

⁸ See Title 18 U.S.C. § 1153.

⁹ See 18 U.S.C. § 1152; See also 18 U.S.C. § 13, the Assimilative Crimes Act, which generally provides that state criminal law applies for crimes committed in federal enclaves.

An Indian tribe may regulate its members within the territory, including the imposition of criminal penalties, but lacks criminal jurisdiction over non-members on its territory.¹⁰

Civil Jurisdiction

Tribal authorities have much broader authority in civil rather than criminal matters. Most ordinary tort, contract and property claims, of the sort usually governed by state rather than federal law, must be exhausted in tribal court before they may be pursued in federal district court.¹¹ It does not appear, however, that this exhaustion requirement must be met before filing a claim in state court in a state that has assumed jurisdiction under PL 280.

Although Florida law applies generally, the United States Supreme Court has interpreted PL 280 to grant states authority to encompass civil jurisdiction only over private civil litigation in state courts, and not to extend such authority to general civil regulatory powers.¹²

In *Seminole Tribe v. Butterworth*, 491 F.Supp. 1015 (S.D. Fla. 1980), the Seminole Tribe of Florida sued to enjoin the enforcement of a state law restricting bingo operations to charitable organizations. The statute was declared to be civil and regulatory in nature rather than criminal and prohibitory, and therefore unenforceable against the Seminole Indian Tribe.

Even subject areas that are heavily regulated under federal law may not attach to civil cases on tribal lands. In *Florida Paraplegic Association v. Miccosukee Tribe of Indians*, 166 F.3d 1126 (11th Cir. 1999), the Court of Appeals for the Eleventh Circuit ruled that the tribe was not required to comply with federal ADA standards for accessibility in certain areas of the Miccosukee Indian Bingo and Gaming Center, basing its decision on tribal sovereign immunity.¹³

The Miccosukee Reserved Area and Other Miccosukee Reserved Lands

The Miccosukee Tribe of Indians of Florida has resided within the Everglades National Park pursuant to a Special Use Permit issued by the National Park Service. In 1998, Congress enacted the Miccosukee Reserved Area Act which provided that the Tribe could live on the Park land permanently.¹⁴ The Act provides that the Area is to be considered Indian country and be treated as a federally recognized Indian reservation. Accordingly, on these lands, s. 285.16, F.S., currently does not apply so that the state does not have civil or criminal jurisdiction over the Miccosukee Reserved Area.

However, the Miccosukee Tribe of Indians of Florida also has tribal reservation land in locations outside the Miccosukee Reserved Area. The reserved lands consist of a 47 acre commercial parcel in western Miami-Dade County at the NW corner of the intersection of Krome Avenue and U.S. 41, a .92 acre commercial parcel in western Miami-Dade County at the SW corner of the intersection of Krome Avenue and U.S. 41, and a 46.36 acre commercial/residential parcel located adjacent to the Miccosukee Reserved Area. Accordingly, on these lands s. 285.16, F.S., is applicable so that the state does have civil and criminal jurisdiction over these areas.

¹⁰ See *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978).

¹¹ See *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985).

¹² See *Bryan v. Itasca County, Minnesota* 426 U.S. 373 (1976).

¹³ Lisa R. Hasday, *Tribal Immunity and Access for the Disabled*, 109 Yale L.J. 1199, 1200, 1204 (2000).

¹⁴ Public Law No. 105-31, 112 Stat. 2964 (1998).

III. Effect of Proposed Changes:

This bill exempts the Miccosukee Tribe of Indians from the state's civil and criminal jurisdiction over Indians or other persons within the reservations of Miccosukee Tribe.

This bill will have a permanent impact. Specifically, once the state relinquishes jurisdiction, unless federal law or tribal agreement changes, the jurisdiction cannot be reestablished.

Criminal Jurisdiction

- Crimes committed by Miccosukee Indians against Miccosukee Indians on Miccosukee Indian reservation land will fall within the exclusive jurisdiction of the tribal court;
- Crimes committed by Miccosukee Indians on non-tribal land against Miccosukee Indians, other Indians, or non-Indians will fall within the jurisdiction of the federal government or state government; and,
- Crimes committed by non-Indians, or non-Miccosukee Indians, on Miccosukee tribal land will fall within the jurisdiction of the federal government.

Civil Jurisdiction

- The Miccosukee tribal court will have civil jurisdiction over civil disputes arising between Miccosukee Indians.
- The Miccosukee tribal court will have civil jurisdiction over civil disputes arising from activity on Miccosukee reservation land between a non- Miccosukee Indian, or a non-Indian, and the Miccosukee tribe or a Miccosukee Indian when the non-member enters into a consensual relationship with the tribe (i.e. a commercial relationship with the tribe; slip and fall at a casino). *See Williams v. Lee*, 358 U.S. 217 (1959), where the court held that the state court had no jurisdiction over a civil claim by a non-member against a member for a transaction that occurred on the reservation.
- The Miccosukee tribal court will have civil jurisdiction over civil disputes arising from activity on Miccosukee reservation land between a non-Miccosukee Indian, or a non-Indian, and the Miccosukee tribe when the non-member's conduct threatens or has some direct effect on the political integrity, economic security, or the health or welfare of the tribe.
- Federal court or state court will have jurisdiction over civil disputes between the Miccosukee tribe and non-members only where Congress has unequivocally authorized the suit or the Miccosukee tribe has clearly waived its immunity from suit.
- Federal court or state court will have jurisdiction over all other civil matters involving disputes between Miccosukee Indians and non-members of the tribe.

State Regulation

- The Miccosukee tribe can, on a limited basis, regulate by taxation, licensing, or other means, activities of non-members who enter into consensual relationships with the tribe or its members. *See, e.g., Brendale v. Confederate Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989), where the court ruled that the tribe could not exercise

zoning authority over lands within the reservation that were owned by non-members of the tribe, except where those lands were in areas of the reservation that were no longer open to the public.

- The Miccosukee tribe can regulate, on a limited basis, conduct of non-members when that conduct threatens or directly affects the political integrity, economic security, or the health or welfare of the tribe. *See, e.g., Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982), where the court held that the tribe's authority to tax non-members who chose to do business on the reservation falls within the tribe's sovereign powers as a necessary instrument of self-government and territorial management.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

When a crime occurs on a reservation against a non-member victim, this bill provides for federal, rather than current state jurisdiction, for those territorial areas not currently included in the Act. This bill appears to remove victim's rights protections provided for in both the Florida Constitution and in Chapter 960.

Chapter 960 of the Florida Statutes is titled the Florida Crimes Compensation Act (s. 960.01, F.S.), and contains various provisions relating to victim assistance.

Additionally, s. 16 of Article I of the Florida Constitution provides for the following:

Section 16. Rights of accused and of victims. –

- (a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties the trial will take

place. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

- (b) Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Based upon judicial precedent, any person who is not a Miccosukee Indian and who is a crime victim on reservation lands would look to the federal courts for prosecution of the case. Those crimes or acts over which the federal courts do not have jurisdiction would likely be governed by tribal law.

As far as civil matters are concerned, disputes involving the Miccosukee tribe, or a member, and a non-member will fall under the jurisdiction of the Miccosukee tribal court, the federal court, or a state court depending on the unique facts of each particular case. The most significant impact may be in the domestic relations area when proceedings involve Miccosukee Indians and non-members of the Miccosukee tribe. The U.S. Supreme Court has ruled that a state court did not have jurisdiction over an adoption proceeding. *See Fisher v. District Court*, 424 U.S. 382 (1976). Notably, however, *Fisher* only involved tribal members and not the assertion of a tribe's authority over non-members. Accordingly, it is unclear whether a state court may ever have jurisdiction over divorces, adoptions, custody disputes and domestic violence injunctions.

C. Government Sector Impact:

It is uncertain what, if any, government sector impact this bill would have.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As a matter of federal law, Florida may not be able to unilaterally withdraw its current jurisdiction over Indian country within its borders.

Title 25 U.S. Code s. 1323 states in part:

The United States is authorized to accept retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, pursuant to the provisions of (Public Law 280).

Under Executive Order 11435, the Secretary of the Interior must consent on behalf of the federal government to any state seeking to retrocede jurisdiction. In practice, such consent has always occurred, but it is unclear what legal effect this requirement might have in the time between this bill's effective date and publication of the Interior Secretary's consent in the Federal Register.

Regardless of this bill, crimes committed in Indian country remain subject to federal prosecution, both exclusively and concurrently with tribal authorities, to an extent specified by Congress. Many such prosecutions are indirectly subject to some state legislative input, since under the Indian Major Crimes Act, state criminal law defines federally-prosecuted crimes that have no specific federal definition. Moreover, regardless of this bill, PL 280 remains subject to Congressional modification or repeal.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
