

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Operations Committee

BILL: SB 1284

INTRODUCER: Senator Geller

SUBJECT: Ratification of Compacts

DATE: March 28, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	Favorable
2.			RI	
3.			JU	
4.			JA	
5.				
6.				

I. Summary:

This bill designates the Governor as the state official responsible for negotiating and executing compacts and agreements on behalf of the State of Florida. It provides that any compact or agreement must be ratified by a majority vote of the Legislature.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

The Florida Statutes contain at least 32 instances in which the Legislature has either ratified an interstate or tribal compact by enacting it into law, or authorized the compact subject to very explicit standards.¹ Florida law does not grant the Governor the general authority to bind the state in compacts or agreements.

Article II, Section 3, of the Florida Constitution, provides:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

¹ See ss. 23.127, 121.45, 212.256, 250.533, 250.540, 252.921, 257.28, 285.165, 322.44, 322.50, 370.19, 370.20, 372.831, 373.71, 377.01, 377.71, 394.479, 403.60, 404.30, 409.401, 409.406, 450.251, 550.901, 590.31, 943.0543, 941.45, 941.56, 949.07, 985.801, 1000.34, and 1012.99, F.S.

Section 20.02(1), F.S., codifies the separation of powers as follows:

The State Constitution contemplates the separation of powers within state government among the legislative, executive, and judicial branches of the government. The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

The separation of powers doctrine has been strictly enforced in Florida to prohibit any branch of state government from encroaching upon powers of another branch.² Article III, Section 1, Florida Constitution, provides that “the legislative power of the State shall be vested in a legislature ...,” interpreted to mean that “fundamental and primary policy decisions shall be made by members of the legislature who are elected to perform those tasks.”³

Governor Crist and the Seminole Tribe recently entered into an agreement related to casino gambling, and a lawsuit was subsequently filed challenging the Governor’s authority to bind the state to a 25-year compact without the approval of the Legislature.⁴ Though the lawsuit focuses on the authority of the Governor to bind the state with the compact with the Seminole Tribe, the decision may address the general authority of the Governor to enter into binding compacts and agreements with other states or Indian tribes, and the role the Legislature has in ratifying such compacts and agreements.

III. Effect of Proposed Changes:

The bill provides that the Governor is the designated state officer responsible for negotiating and executing, on behalf of the state, compacts and agreements with other states, agencies of other states, or an Indian tribe in this state.

The Governor must submit a copy of any executed tribal-state compact to the Legislature for ratification by a majority vote of both houses and must submit a copy to the Secretary of State pending receipt of ratification. Once the compact is ratified, the Secretary of State must forward a copy of the compact or agreement and the ratifying act to the signatories to the compact or agreement for review and approval.

The bill defines “compact” to include any tribal-state compact between the State of Florida and an Indian tribe, and “agreement” to include any mutual-aid agreement with agencies of other states which is understood to have the status of a compact but is not actually an agreement between states, or any similar agreement.

² *Florida Department of State Division of Elections v. Martin*, 916 So.2d 763 (Fla. 2005); *Chiles v. Children A, B, C, D, E, and F*, 589 So.2d 260 (Fla. 1991).

³ *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla. 1978).

⁴ *Florida House of Representatives, et al. v. Honorable Charlie J. Crist, Jr., Governor*, No. SC07-2154.

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:

The constitutional issues inherent in the bill involve the one branch encroaching on the authority of another branch. If signed into law and legally challenged, the separation of powers issue would not be resolved until a court issues a decision.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill has no direct impact, but ratified compacts and agreements could financially benefit private entities.

C. Government Sector Impact:

The bill has no direct impact, but ratified compacts and agreements could affect state finances.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill contains a definition for “compact” in subsection (1) that includes tribal-state compacts, and also requires in subsections (2) and (3) that any compact with Indian tribes must be negotiated by the Governor and ratified by the Legislature. There is no need to refer to the types of compacts in the substantive subsections, since “compact” is already defined in the definitional subsection.

By designating the Governor as the only state officer responsible for negotiating and executing compacts and agreements, the bill may infringe upon the requirement that agency heads execute their powers pursuant to s. 20.05, F.S., and infringe upon the power of the Legislature to initiate compacts or agreements via legislation.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
