

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.

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.

The Legislature’s challenge to the compact is based on several other state supreme court decisions. Other state supreme courts have rejected the notion that the Governor of the state has the power to unilaterally negotiate and execute an Indian gaming compact without legislative approval. The supreme courts in New Mexico, Kansas, Rhode Island, New York, and Wisconsin have held that the Governor does not have the power to bind the state to a tribal-state compact without legislative authority.⁵

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. (Oral argument was held on January 30, 2008.)

⁵ *State ex rel. Stephan v. Finney*, 251 Kan. 559, 836 P.2d 1169 (Kan. 1992); *State v. Johnson*, 120 N.M. 562, 904 P.2d 11 (N.M. 1995); *Narragansett Indian Tribe of R.I. v. Rhode Island*, 667 A.2d 280 (R.I. 1995); *Saratoga Co. Chamber of*

The challenged Florida compact grants to the Seminoles an expansion to their slot machines by allowing them to operate Class III or “Vegas-style” slot machines in their tribal casinos instead of the currently used Class II “bingo-style” machines. The Class II machines are not played like Class III slot machines; rather, the players are networked and compete against each other in an electronic bingo game to determine prize payouts. The Class III “Vegas-style” slot machines are authorized in the Broward County and Miami-Dade County pari-mutuel facilities.⁶ The slot machines allow for house banked prizes and slight variations in how the mechanics of the game are operated.⁷

The challenged compact would also grant to the Seminole Tribe the addition of Class III house-banked card games such as blackjack, baccarat, and other similar games. It does, however, limit the expansion to card based games only and does not include traditional casino games such as craps, roulette, and keno.

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. It provides that any compact or agreement, if not codified by the Legislature, must be ratified by a majority vote of the Legislature. It is unclear what is meant by is (bill uses “is not codified”) since there is no temporal reference to discern whether the language applies prospectively or to those compacts and agreements that are codified in statute up to the effective date of the bill.

The Governor must submit a copy of any executed compact or agreement that has not been codified by the Legislature, 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.

Ratification is not defined in the bill nor does the bill speak to what would happen if the Legislature refused to ratify or desired to amend the language it was being asked to ratify. For actions taken by the legislature to bind a treaty negotiated by the executive, Black’s Law Dictionary defines “ratification” as: “(C)onfirmation and acceptance of a previous act, thereby making the act valid from the moment it was done.”

The bill defines “compact” to include any interstate compact between the state of Florida and other states, any tribal-state compact between the State of Florida and an Indian tribe in this state, and any subsequent amendments to the compact. The bill defines “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, any similar agreement, or any subsequent amendments to the agreement.

Commerce, Inc. v. Pataki, 100 N.Y.2d 801, 798 N.E.2d 1047 (N.Y. 2003); and *Panzer v. Doyle* 271 Wis.2d 295, 680 N.W.2d 666 (Wisc. 2004).

⁶ See s. 23, Art. X, Florida Constitution and ch. 551, F.S.

⁷ Slot machines are defined in s. 551.102(8), F.S.; see also ss. 849.15 and 849.16, F.S.

The bill will take effect upon becoming a law.

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 this bill is 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:

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.)

CS by Regulated Industries on April 15, 2008:

The committee substitute adds any subsequent amendments to the definitions of compact and agreement. It clarifies that a compact or agreement that is not codified by the Legislature must be conditioned upon ratification by the Legislature. It clarifies that the act applies to actions brought on or after the effective date.

- B. **Amendments:**

None.

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