

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 Regulated Industries Committee

BILL: SB 980

INTRODUCER: Senator Geller

SUBJECT: Indian Gaming Activities

DATE: February 4, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Aubuchon</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill designates the Governor as the state official responsible for negotiating and executing tribal-state gaming compacts on behalf of the State of Florida. It provides that any tribal-state compact must be ratified by majority vote of both houses of the Legislature. The executed tribal-state compact must then be submitted to the Secretary of State who shall then forward a copy of the ratified compact to the United States Secretary of the Interior for review and approval.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Currently, there is no statutory authority relating to tribal-state compacts in Florida. Tribal-state compacts are an issue in Florida due to the recent agreement entered into between Governor Crist and the Seminole Tribe and the ensuing challenge to the Governor’s authority to bind the state to a 25-year compact without the approval of the Legislature.

The tribal-state compact between the Governor and the Seminole Tribe grants to the Seminoles an expansion on the type of slot machines allowed as well as gives them some additional forms of Class III gaming.¹ The agreement was then challenged by the Legislature and oral arguments were heard by the Florida Supreme Court on January 30, 2008.² Although the proposed compact

¹ See *Compact Between the Seminole Tribe of Florida and the State of Florida*, November 17, 2007. The compact authorizes as a “Covered Game,” slot machine gaming, any banking of banked card game, high stake poker as defined in the compact, any games of the Florida Lottery, and any new gaming authorized by Florida law. It specifically excludes roulette, craps, roulette-styled games, or craps-styles games.

² *Florida House of Representatives, et al. v. Honorable Charlie J. Crist, Jr., Governor*, No. SC07-2154.

was approved by the United States Secretary of the Interior and published in the Federal Register,³ the agreement may still be considered null and void by decision of the Florida Supreme Court.⁴

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

Gaming on Indian Lands is governed by the Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701-2721, and 18 U.S.C. ss. 1166-1168.

The Indian Gaming Regulatory Act (IGRA)⁶ divides gaming into three classes. Class I gaming means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations.⁷

Class II gaming includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo.⁸ Class II gaming may also include certain non-banked card games if permitted by state law or not explicitly prohibited by the laws of the state but the card games must be played in conformity with the laws of the state.⁹ A tribe may conduct Class II gaming if: a) the state in which the tribe is located permits such gaming for any purpose by any person, organization or entity; and b) the governing body of the tribe adopts a gaming ordinance which is approved by the Chairman of the National Indian Gaming Commission.¹⁰

Class III gaming includes all forms of gaming that are not Class I or Class II, such as house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, and pari-mutuel wagering.¹¹

The challenged agreement 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 true 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 true slots

³ Vol. 73, no.4, *Federal Register*, January 7, 2008.

⁴ See *State v. Johnson*, 120 N.M. 562, 904 P.2d 11 (N.M. 1995).

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 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 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 et seq.

⁷ 25 U.S.C. s. 2703(6).

⁸ 25 U.S.C. s. 2703(7).

⁹ 25 U.S.C. s. 2703(7)(A)(ii).

¹⁰ 25 U.S.C. s. 2710(b)(1).

¹¹ 25 U.S.C. s. 2703(8).

that allow for house banked prizes and slight variations in how the mechanics of the game are operated.

Class III slot machines are currently being operated at Broward County pari-mutuel facilities. The electors approved Amendment 4 to the State Constitution¹² codified at s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005. The measure was approved by the electors in Broward County but the measure was initially defeated in Miami-Dade County. The electors in Miami-Dade approved slot machine gaming at the pari-mutuel facilities in the county on January 29, 2008.

Under the provisions of the amendment, four pari-mutuel facilities are eligible to conduct slot machine gaming in Broward County: Gulfstream Park Racing and Casino, a thoroughbred permitholder; Pompano Park, a harness racing permitholder; Dania Jai Alai, a jai alai permitholder; and Mardi Gras Racetrack and Gaming Center, formerly known as Hollywood Greyhound Track, a greyhound permitholder. Gulfstream Park Racing and Casino was licensed to operate slots by the state on October 13, 2006, and opened on November 15, 2006. Mardi Gras Racetrack and Gaming Center was licensed on September 29, 2006, and opened on December 26, 2006. Pompano Park was licensed January 10, 2007, and is expected to open March 15, 2007. Dania Jai Alai was licensed on January 17, 2007, but it is unclear when that facility will open. The additional facilities are now eligible to conduct slot machine gaming in Miami-Dade County: Flagler Greyhound Track, a greyhound permitholder, Calder Racetrack, a thoroughbred permitholder, and Miami Jai Alai, a jai alai permitholder.

The challenged compact would also grant to the Seminole Tribe the addition of 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.

The Indian Gaming Regulatory Act states that before a tribe may lawfully conduct Class III gaming, certain conditions must be met. First, the particular form of Class III gaming that the tribe wishes to conduct must be permitted in the state in which the tribe is located. Next, the tribe and the state must have negotiated a compact that has been approved by the Secretary of the Interior and is in effect. Finally, the tribe must have adopted a tribal gaming ordinance that has been approved by the Indian Gaming Commission or its chairman.¹³

III. Effect of Proposed Changes:

The bill provides that the Governor is the designated state officer responsible for negotiating and executing tribal-state compacts on behalf of the state, relating to Class III gaming under the federal Indian Gaming Regulatory Act of 1988.¹⁴

¹² The amendment was proposed by Initiative Petition filed with the Secretary of State on May 28, 2002 and adopted by the electorate at the General Election in 2004.

¹³ 25 U.S.C. s. 2710(d).

¹⁴ Supra at n. 6.

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 and the ratifying act to the United States Secretary of the Interior for review and approval in accordance with the United States Code.¹⁵

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no direct impact but a ratified compact could financially benefit the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁵ 25 U.S.C. s. 2710 (d)(3)(B).

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.
