

# 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: CS/SB 2248

SPONSOR: Criminal Justice Committee and Senator Garcia

SUBJECT: Indian Reservations - Relinquishment of Criminal and Civil Jurisdiction

DATE: March 9, 2002 REVISED: 03/12/02 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>CA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill amends s. 285.16, F.S., to provide for retrocession of the state's assumption of jurisdiction over criminal offenses committed by Indians within the Indian reservations of the Miccosukee Tribe of Indians of Florida. The bill also provides for retrocession of the state's assumption of jurisdiction over civil causes of action brought against Indians which arise within the Miccosukee Indian reservations.

The bill becomes effective upon becoming law.

This bill substantially amends section 285.16, F.S.

## II. Present Situation:

Florida has assumed criminal and limited civil jurisdiction over matters which occur on Indian reservations within the state. Historically, Federal or tribal laws, not state laws, have applied to tribal Indians on reservations unless Congress has granted state authority.

In 1953 Congress enacted what is commonly referred to as Public Law 280 (Public Law 83-280), which provided in part:

The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State in assumption thereof. Section 7, Public Law 83-280.

Pursuant to the authority granted the States by Congress, in 1961 the Florida Legislature enacted s. 285.16, F.S., which provides:

- (1) The State of Florida hereby assumes jurisdiction over criminal offenses committed by or against Indians or other persons within Indian reservations and over civil causes of actions between Indians or other persons or to which Indians or other persons are parties arising within Indian reservations.
- (2) The civil and criminal laws of Florida shall obtain on all Indian reservations in this state and shall be enforced in the same manner as elsewhere throughout the state.

It should be noted that although Section 7 of Public Law 280 was repealed in 1968, the acceptance of jurisdiction by Florida and other states were not affected. The Attorney General has opined that “barring any retrocession by the Florida Legislature to the United States based on 25 U.S.C.A. s. 1323, the laws of the State of Florida govern criminal offenses committed by or against Indians or other persons within Indian reservations, and the civil laws of the State of Florida control on such reservations as they do elsewhere in Florida, insofar as such criminal or civil laws do not conflict with federal law.” *FLAGO 072-403, 074-77, 094-45.*

Title 25 U.S. Code section 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).”

### ***Limitations on Civil Jurisdiction***

Although Florida law applies, in a general sense, there are limitations as explained by the United States Supreme Court in *Bryan v. Itasca County, Minnesota*, 426 U.S. 373 (1976). The *Bryan* court construed section 4 of Public Law 280 as granting civil jurisdiction only over private civil litigation in state courts, not to include general civil regulatory powers.

An example of this limitation of powers can be found in the case of *Seminole Tribe v. Butterworth*, 491 F.Supp. 1015 (S.D. Fla. 1980), *aff'd*, 658 F.2d 310 (5<sup>th</sup> Cir. 1981), *cert.den.*, 455 U.S. 1020 (1982), where 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/regulatory” in nature rather than “criminal/prohibitory,” and therefore unenforceable against the Seminole Indian Tribe. (see also *Houghtaling v. Seminole Tribe of Florida*, 611 So.2d 1253 (Fla. 1993). Although the state has jurisdiction over civil lawsuits between Indians and other persons, it does not have jurisdiction in suits brought by other persons against the Tribe, unless there has been an express waiver of tribal sovereign immunity.)

### ***Recent Issues - Criminal Jurisdiction***

In the highly publicized murder trial of Miccosukee Tribe member Kirk Billie last year, several issues and tensions were brought to the forefront of public discussion. The State Attorney’s Office in Dade County prosecuted the case wherein Kirk Billie was found guilty of second degree murder and subsequently sentenced to life in prison for the drowning death of his two young children.

The Miccosukee Tribe objected to the state's prosecution of the case. According to news accounts of the trial, tribal leader Billie Cypress wrote to prosecutors: "The tribal members believe they have handled the issues, Indian to Indian. The Indian community is different from other communities, they deal with matters in a different way." It is reported that Kirk Billie had apologized for the death of the children and had been forgiven by tribal leaders.

Although the state had jurisdiction over the criminal matter, as the State has jurisdiction over reservation Indians for crimes committed off-reservation, both the prosecution and the defense were thwarted in their efforts to subpoena witnesses for the trial. In the Southern District Court of Florida, a judge ruled that the State and the defense subpoenas could not be enforced because the State had no jurisdiction within the Miccosukee Reserved Area to serve and enforce compulsory process within the Miccosukee Reserved Area. (*Miccosukee Tribe v. United States*, Case No. 00-3453-CIV-HUCK, Order on Plaintiff's Emergency Motion for Preliminary Injunction, for Protective Order, and to Quash Subpoenas, December 15, 2000).

Since the ruling by the Court in the above-referenced Billie case, the U.S. Supreme Court has issued an opinion which indicates that "tribal authority to regulate state officers in executing process related to the violation, off reservation, of state laws is not essential to tribal self-government or internal relations – to the right to make laws and be ruled by them." *Nevada v. Hicks*, 121 S.Ct. 2304 (U.S. 2001). The Court further explained that "nothing in the federal statutory scheme prescribes, or even remotely suggests, that state officers cannot enter a reservation ... to investigate or prosecute violations of state law occurring off the reservation." *Id.* at 2313.

#### ***The Miccosukee Reserved Area***

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. *Public Law No. 105-31, 112 Stat. 2964 (1998)*. The Miccosukee Reserved Area Act provides that the Miccosukee Reserved Area is to be considered Indian country and be treated as a federally recognized Indian reservation. Section 5 of the Act states that Public Law 280 shall not apply to the Miccosukee Reserved Area.

An Indian tribe may regulate the activities of its members within its territory, but a tribe lacks criminal jurisdiction over non-members on its territory. (see *Montana v. U.S.*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978). The Indian Major Crimes Act designates certain crimes for exclusive federal jurisdiction in those cases where an Indian commits a crime against the property or person of another Indian or non-Indian. *Title 18 U.S.C. 1153*.

### **III. Effect of Proposed Changes:**

The bill relinquishes state criminal and civil jurisdiction within the Indian reservations of the Miccosukee Tribe of Florida in actions wherein Indians are defendants.

Once the state relinquishes jurisdiction, absent a change in federal law or the agreement of the Tribe, the jurisdiction cannot be reestablished.

The primary effect of the bill would be to give the federal or tribal legal systems jurisdiction over all matters within the confines of the reservation.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It appears that any person 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 be governed by tribal law. The same principal would apply in civil matters.

C. Government Sector Impact:

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill does not define the term “Indians.” Section 285.08 (2), F.S., does define that term to mean one or more members of a tribe, which means, pursuant to s. 285.08 (1), F.S. the Seminole Tribe in the state composed of bands of Indians known and referred to as Miccosukee and Muskogee or Cow Creek. However, these definitions only apply to ss. 285.09-285.13, F.S. The bill creates s. 285.16, F.S., so the aforementioned definitions may not apply to the bill. Accordingly, the bill could result in the state relinquishing jurisdiction of civil and criminal matters involving *any* Indian from any state or country, not just Miccosukee Indians who live on Miccosukee Indian Reservations.

**VIII. Amendments:**

#1 by Judiciary:

Revises the bill by: (1) deleting the provision that relinquishes the state's jurisdiction over civil causes of action; and (2) limiting the state's relinquishment of jurisdiction over criminal cases to only those criminal offenses committed by an enrolled member of the Miccosukee Tribe of Indians of Florida, or a person eligible for such enrollment, against the person or property of a member of, or a person eligible for membership in, the Miccosukee Tribe of Indians of Florida.

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

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