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.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 134

SPONSOR: Regulated Industries Committee and Senator Geller

SUBJECT: Indian Gaming Activities

DATE: February 23, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	**Fav/CS**
2.			JU	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill provides that the Governor is the designated state officer responsible for negotiating and executing tribal-state compacts relating to class III gaming. The Governor must submit a copy of any executed tribal-state compact to the Legislature for ratification by a majority vote by both houses and must submit a copy to the Secretary of State pending ratification. Once the compact is ratified, the Secretary of State must forward a copy of the compact and the ratification act to the U.S. 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 provision related to tribal-state compacts in Florida. Tribal-state compacts are an issue that Florida is facing with the recent passage of Amendment 4 in the 2004 General Election. It is codified at Article X, s. 23, Florida Constitution. Amendment 4 authorizes Miami-Dade and Broward counties to hold referenda to determine whether slot machines should be allowed in existing, licensed pari-mutuel facilities. The referenda are set for March 8, 2005 in Miami-Dade and Broward counties.

Under the Indian Gaming Regulatory Act (IGRA) slot machines are considered Class III gaming and open up the possibility for the tribes to negotiate a compact with the state allowing slots in the tribal casinos.[1]

The law provides that before a tribe may lawfully conduct Class III gaming, the following conditions must be met: (1) the particular form of Class III gaming that the tribe wants to

[1] 25 U.S.C. 2701, et seq.

conduct must be permitted in the state in which the tribe is located; (2) the tribe and the state must have negotiated a compact that has been approved by the Secretary of the Interior, or the Secretary must have approved regulatory procedures; and (3) the tribe must have adopted a tribal gaming ordinance that has been approved by the Indian Gaming Commission or its chairman.[2]

The compact may contain any subjects directly related to the operation of gaming activities. A state or political subdivision does not have authority to impose taxes, fees, charges, or other assessments upon tribes that seek to operate Class III gaming and a state is prohibited from refusing to negotiate based on the lack of authority in such state, or its political subdivision to, imposing a tax, fee, charge, or other assessment.

A tribe may agree to pay assessments to a state or a political subdivision to defray the costs of state regulation of its Class III gaming activities and may agree to a payment in lieu of taxes to the state in amounts comparable to amounts assessed by the state for comparable activities.[3]

Attorneys representing the Miccosukee Indians sent a letter, dated November 5, 2004, to the Governor requesting compact negotiations for slot machines on their reservation. The Governor has not responded.

The IGRA provides, in relevant part, that an Indian tribe may initiate a cause of action 180 days after the date the tribe requested the state to enter into negotiations if (1) a tribal-state compact has not been entered into and (2) the state did not respond to the request of the Indian tribe or did not respond to the request in good faith.[4]

The U.S. Supreme Court held part in *Seminole Tribe v. State of Florida* that the Eleventh Amendment prohibits an Indian tribe from suing a state in Federal court for an alleged failure of the state to negotiate a compact in good faith.[5] The Department of Interior subsequently responded to the *Seminole* decision by publishing a regulation to address this issue.[6]

The regulation provides, in part, that an Indian tribe may ask the Secretary of the Interior to issue Class III gaming procedures when the following steps have taken place:

> (a) The Indian tribe submitted a written request to the State to enter into negotiations to establish a Tribal-State compact governing the conduct of Class III gaming activities;
> (b) The State and the Indian tribe failed to negotiate a compact 180 days after the State received the Indian tribe's request;
> (c) The Indian tribe initiated a cause of action in Federal district court against the State alleging that the State did not respond, or did not respond in good faith, to the request of the Indian tribe to negotiate such a compact;
> (d) The State raised an Eleventh Amendment defense to the tribal

[2] 25 U.S.C. s. 2710(d).
[3] *Id. (* Sometimes referred to as "revenue sharing.")
[4] 25 U.S.C. s. 2710(d)(7)(B).
[5] 517 U.S. 44, (1996).
[6] 25 CFR 291.3. The states of Florida and Alabama have challenged the Secretary's authority to promulgate this regulation.

action; and
(e) The Federal district court dismissed the action due to the State's sovereign immunity under the Eleventh Amendment.

The U.S. Supreme Court also noted in its decision that the duty imposed by the IGRA to negotiate in good faith "is not likely to be performed by an individual state executive officer or even a group of officers."[7] California, Kansas, Ohio, and New York specifically require legislative ratification or approval of tribal-state compacts.[8] However, Nebraska specifically provides that the compact shall be executed by the Governor without ratification by the Legislature.[9]

III. Effect of Proposed Changes:

The bill creates a new statutory section that provides that the Governor is the designated state officer responsible for negotiating and executing tribal-state compacts relating to class III gaming under the federal Indian Gaming Regulatory Act of 1988.[10]

The Governor must submit a copy of any executed tribal-state compact to the Legislature for ratification by a majority vote by 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 U.S. Secretary of the Interior for review and approval in accordance with the United States Code.[11]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[7] 517 U.S. 44, at 75 n. 17 [citing *State ex rel. Stephan v. Finney*, 836 P. 2d 1169, 251 (1992)].
[8] Cal. Gov. Code s. 12012.25 (West 2000), Kan. Stat Ann. S. 46-2302 (2003), Baldwin's Ohio Rev. Code s. 107.25 (West 2004), N.Y. Executive Law s. 12 (McKinney 2001).
[9] Neb. Rev. Stat s. 9-1,106 (2004).
[10] 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 et seq.
[11] 25 U.S.C. s. 2710 (d)(3)(B).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.