

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7129 PCB SICR 09-01 Seminole Indian Gaming Compact

SPONSOR(S): Select Committee on Seminole Indian Compact Review

TIED BILLS: **IDEN./SIM. BILLS:**

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--------------|--|-----------|-----------------|----------------|
| Orig. Comm.: | Select Committee on Seminole Indian Compact Review | 17 Y, 1 N | Lewis/Liepshutz | Levesque |
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SUMMARY ANALYSIS

Florida has no statutory framework for establishing gaming compacts with Indian tribes. In 2007, a gaming compact was negotiated between Governor Charlie Crist and the Seminole Indian Tribe of Florida and was published in the Federal Register on January 7, 2008. On July 3, 2008, the Supreme Court invalidated the Compact, finding that the Governor exceeded his authority by executing the Compact without Legislative approval.

The proposed committee bill directs the Governor to negotiate and execute a compact that includes the following provisions:

- authorizes the operation of class III slot machines and high stakes celebrity/charity poker tournaments for charity, but specifically precludes banked card games such as blackjack, baccarat, and chemin de fer;
- authorizes the games to be conducted at seven specified tribal facilities;
- requires the Tribe to establish and comply with minimum rules, regulations and minimum procedural requirements related to the operation of tribal gaming facilities;
- requires the Tribe to cease all banked card games within 90 days of the effective date of the Compact;
- requires the Tribe to adopt procedures for the resolution of patron disputes, worker's compensation claims and tort claims, including a limited waiver of immunity from suit for tort claims up to \$500,000 per individual and capped at \$1,000,000 for claims arising out of a single event or occurrence;
- requires the Tribe and the Seminole Tribal Gaming Commission to enforce the provisions of the Compact as well as rules, regulations and procedures related to operation of the Tribe's gaming facilities, including facilities management, licensure and background checks of covered gaming employees, record retention, compulsive gambling training, and compliance with the Florida Building Code;
- provides for state monitoring of the Tribe's compliance with the compact, including random inspection of public areas of facilities and games without advance notice and non-public areas with 1-hour notice, testing of gaming machines, an annual independent financial audit of Covered Games and an annual compliance audit of the slot machines;
- provides the obligations and rights of the Tribe and the State under the Compact are contractual in nature and clarifies that the Compact does not alter tribal, state or federal civil or criminal jurisdiction
- Provides a schedule for revenue sharing payments by the Tribe to the State in the amount of 18% of net win from covered games, but providing a guaranteed minimum of \$100 million annually;
- Provides for reduction of tribal payments because loss of exclusivity of gaming through authorization of other class III games or slot machines outside of Miami-Dade and Broward with exceptions for compacts with other federally recognized Indian tribes or if expansion of class III games or slot machines occurs through a citizen's initiative and the annual Net Win from covered games falls below \$1.37 billion;
- Provides for dispute resolution for the State or Tribe if either believes the other party has failed to comply with the Compact, including mediation and non-binding arbitration, limited waiver of sovereign immunity by the Tribe and guaranteeing the State the right to seek immediate injunctive relief in court and;
- Provides for non-severability in the event any provision of the Compact is held to be invalid;
- Provides the Compact will be effective upon approval by Secretary of Interior for a term of ten (10) years;
- Provides for amendment of compact by written agreement of both parties; and procedure for amendment of references;
- Provides a force majeure clause and a pro rata share for reduction of revenue sharing;
- Provides for smoke-free or reduced-smoke environments in existing facilities and new construction;
- Provides for requirement of minimum 85% payout for slot machines;
- Provides for fair treatment of employees and compliance with federal and state labor laws;
- Provides an effective date of upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 4/10/2009

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regarding gambling activity within its borders, Florida has a state-run lottery; 7 casino facilities operated by the Seminole Tribe, located on six reservations in 5 counties; 1 casino facility operated by the Miccosukee Tribe, located in Miami-Dade County; and 27 licensed pari-mutuels, located throughout 19 counties in the state.

The Seminole Indian Tribe is a federally recognized Indian tribe whose reservations and trust lands are located in the State. The Tribe has seven facilities located on tribal lands as follows:

1. the Seminole Indian Casino on the Brighton Indian Reservation in Okeechobee County,
2. the Seminole Indian Casino in Immokalee in Collier County,
3. the Seminole Indian Casino in the City of Hollywood in Broward County,
4. the Seminole Indian Casino in the City of Coconut Creek in Broward County,
5. the Seminole Hard Rock Hotel & Casino in the City of Hollywood in Broward County,
6. the Seminole Indian Big Cypress Casino in the City of Clewiston in Hendry County, and
7. the Seminole Hard Rock Hotel & Casino in the City of Tampa in Hillsborough County.

In 2004, Florida's voters approved an initiative petition that amended the state constitution to allow Class III slots at pari-mutuels in Broward and Miami-Dade Counties, subject to a final county-level vote of approval in each county.¹ In 2005, Broward County's voters approved slots for their county, granting the right to offer class III slots machines at four pari-mutuel facilities: Dania Jai Alai; Gulfstream Park Racing and Casino (thoroughbred racing); The Isle Casino and Racing at Pompano Park (harness racing); and Mardi Gras Race Track and Gaming Center (greyhound racing). However, Miami-Dade voters rejected slots at that time. In 2008, the question was again placed before Miami-Dade voters in 2008 and was approved, granting the right to offer class III slots machines to three more facilities: Calder Race Course (thoroughbred racing); Miami Jai-Alai; and Flagler Greyhound Track.

The Indian Gaming Regulatory Act

The Indian Gaming and Regulatory Act (IGRA), codified at 25 USCA §§ 2701-2721, was enacted in 1988 in response to the United State Supreme Court decision in *California v. Cabazon Band of Mission*

¹ Art. X, s. 23, Fla. Const.

Indians, 480 U.S. 202 (1987). The act provides for “a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between tribes and States for regulation of class III gaming.”² In so doing, IGRA seeks to balance the competing interests of two sovereigns: the interests of the Tribe in engaging in economic activities for the benefit of its members and the interest of the state in either prohibiting or regulating gaming activities within its borders.³

IGRA separates gaming activities into three categories:

- Class I games are “social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.”⁴ Class I games are within the exclusive jurisdiction of the Indian tribes.⁵
- Class II games are bingo and card games that are explicitly authorized or are not explicitly prohibited by the laws of the State.⁶ The tribes may offer Class II card games “only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.”⁷ Class II gaming does not include “any banking card games, including baccarat, chemin de fer, or blackjack (21), or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.”⁸ Class II games are also within the jurisdiction of the Indian tribes, but are also subject to the provisions of IGRA.⁹
- Class III games are defined as any games that are not Class I or Class II. Class III games include slot machine and banked card games such as blackjack, baccarat and chemin de fir.¹⁰

Class III games can only be offered by an Indian tribe if they meet three requirements: (1) the games are authorized by an ordinance or resolution adopted by the governing body of the Indian tribe, is approved by the Chairman of the National Indian Gaming Commission, and comply with the regulatory requirements of IGRA; (2) the games are located in a State that permits such gaming for any purpose by any person, organization, or entity; and (3) the games are conducted in conformance with a Tribal-State compact entered into between an Indian tribe and State that is in effect.¹¹

When an Indian tribe desires to conduct Class III games, the tribe must request the state to enter into negotiations for the purpose of entering into a tribal-state compact governing the conduct of gaming activities. Upon receiving such a request, the state is obligated to negotiate with the Indian tribe in good faith to enter into such a compact.¹² Under IGRA, a tribe is not entitled to a compact, but is only entitled to a state’s good faith negotiations. A compact may include the following provisions: (1) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity; (2) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations; (3) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity; (4) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities; (5) remedies for breach of contract; (6) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and (7) any other subjects that are directly related to the operation of gaming activities.¹³

² United States Senate Report No. 100-446, Aug. 3, 1988

³ *Id.*

⁴ 25 U.S.C. 2703(6)

⁵ 25 U.S.C. 2710(a)(1)

⁶ 25 U.S.C. 2703(7)(A)

⁷ *See id.*

⁸ 25 U.S.C. 2703(7)(B)

⁹ 25 U.S.C. 2710(a)(2) and (b)

¹⁰ 25 U.S.C. 2703

¹¹ 25 U.S.C. 2710(d)(1)

¹² 25 U.S.C. 2710 (d)(3)(A)

¹³ 25 U.S.C. 2710 (d)(3)(C)

Any compact that is entered into by a tribe and a state will take effect when approval by the Secretary of the Interior is published in the Federal Register.¹⁴ Upon receipt of a proposed compact, the Secretary has 45 days to approve or disapprove the compact.¹⁵ A compact will be considered to be approved if the Secretary fails to act within the 45-day period.¹⁶ A compact that has not been validly “entered into” by a state and a tribe, e.g. execution of a compact by a state officer who lacks the authority to bind the state, cannot be put “into effect” because it was improperly entered into, even if the Secretary of the Interior publishes the compact in the Federal Register.¹⁷

Congress provided two options by which a tribe could obtain the ability to conduct Class III tribal gaming.¹⁸ Under the first option, the tribe and the state may voluntarily negotiate a compact permitting class III gaming, subject to approval of the compact by the Secretary.¹⁹

Under the second option, when the negotiations fail to produce a compact, a tribe may file suit against the state in federal court and seek a determination whether the state negotiated in good faith.²⁰ If the court finds the state negotiated in good faith, the tribe's proposal fails. On a finding of lack of good faith, however, the court may order negotiation, then mediation. If the state ultimately rejects a court-appointed mediator's proposal, the Secretary “shall prescribe, in consultation with the Indian tribe, procedures ... under which class III gaming may be conducted.”²¹

The tribal remedies provided under the second option were nullified in the case of *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996). In that case, the Seminole Tribe of Florida had argued that the State had not negotiated in good faith,²² seeking relief through IGRA. The United States Supreme Court concluded that Congress's attempt to abrogate the State's Eleventh Amendment immunity from suit²³ under the Indian Commerce Clause was invalid. The practical effect of the Court's ruling was to take away a tribe's ability to enforce the provisions of IGRA against a state that may be negotiating in bad faith.

In response to *Seminole Tribe*, the Department of the Interior adopted rules to craft a remedy for tribes who bring suit against a state which raises the Eleventh Amendment as a defense.²⁴ The validity of the promulgated rules is suspect. The only federal court to squarely address validity of the secretarial rules held them to be invalid. In *Texas v. United States*, 497 F.3d 491, (5th Cir. 2007), the Fifth Circuit Court of Appeals found Interior's procedures would upset the a “finely-tuned balance between the interests of the states and the tribes” by legalizing tribal gaming in the absence of both a compact and a finding of bad faith through a neutral judicial process. Whether the Department of the Interior has the authority to issue such procedures and permit tribal gaming in the absence of a valid compact is still an open question in the Eleventh Circuit.

There is no explicit provision under IGRA that authorizes revenue sharing. IGRA specifically states:

[N]othing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack

¹⁴ 25 U.S.C. 2710(d)(3)(B)

¹⁵ 25 U.S.C. 2710(d)(8)(C)

¹⁶ *See id.*

¹⁷ *See Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546, (10th Cir. 1997), cert. denied, 522 U.S. 807 (1997).

¹⁸ *See generally* 25 U.S.C. 2710(d)

¹⁹ 25 U.S.C. 2710(d)(3)

²⁰ 25 U.S.C. 2710(d)(7)

²¹ 25 U.S.C. 2710(d)(7)(B)

²² Notwithstanding the Seminole Tribe's contrary contentions, the only federal court to rule on the issue found that the State had negotiated in good faith. *See Seminole Tribe of Florida v. Florida*, 1993 WL 47599 (S.D.Fla. 1993).

²³ The Eleventh Amendment to the United States Constitution states “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

²⁴ 25 C.F.R. 291.1, et seq.

of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.²⁵

Notwithstanding this restriction, revenue sharing has been permitted when the State has provided a valuable economic benefit, usually in the form of exclusivity in game offerings or geographic monopoly.²⁶

Litigation of the Compact

Since January, 1991, the Seminole Tribe has sought a Class III gaming compact with the State of Florida.²⁷ Following the decision in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), the Department of the Interior instituted rules to authorize class III gaming when a state asserts Eleventh Amendment immunity. The Tribe subsequently petitioned the Department to establish Class III gaming procedures. In January 2001, the Secretary issued a twenty-page decision allowing the Tribe to offer a wide range of Class III games. When the State requested clarification of the Secretary's order, the Secretary withdrew the decision.

After Broward County approved Class III slots in 2005, negotiations between the Seminole Tribe and Governor Bush were again commenced in earnest. In late 2006, negotiations reached an impasse and were discontinued.

On November 14, 2007, Governor Charlie Crist entered into a compact with the Seminole Tribe. Under the terms of the Compact, the Tribe was allowed to offer banked card games, including blackjack, baccarat and chemin de fer, which are illegal under Florida law. The Compact was entered into under threat of authorization of slot machines via secretarial procedures from the Department of the Interior. Then-Speaker Marco Rubio promptly sued Governor Crist on the ground that Florida's constitutional separation of powers required legislative approval of the Compact. The Compact was not acted upon by the Secretary of the Interior within 45 days, and subsequently was considered approved by operation of law and published on January 7, 2008.

In a unanimous opinion issued on July 3, 2008, the Florida Supreme Court ruled the compact invalid absent legislative approval.²⁸ The Court found that the Governor had exceeded the scope of his authority by granting the Tribe the right to engage in activity – specifically, banked card games – that was otherwise illegal under state law.

The Seminole Tribe was able to begin offering Class III slots and banked card games at several of its locations in Florida during the pendency of the lawsuit. The rollout of Class III slot machines and table games was as follows:

- January 24, 2008 – Class III slots at the Seminole Hard Rock Hotel & Casino in Hollywood, FL
- February 27, 2008 – Class III slots at the Seminole Indian Casino in Coconut Creek, FL
- March 10, 2008 – Class III slots at the Seminole Indian Casino in Hollywood, FL
- April 22, 2008 – Class III slots at the Seminole Hard Rock Hotel & Casino in Tampa, FL
- May 20, 2008 – Class III slots at the Seminole Indian Casino in Immokalee, FL
- June 16, 2008 – Class III slots at the Seminole Indian Casino on the Brighton Indian Reservation
- June 22, 2008 – Banked table games at the Seminole Hard Rock Hotel & Casino in Hollywood, FL
- November 13, 2008 – Banked table games at the Seminole Hard Rock Hotel & Casino in Tampa, FL
- December 4, 2008 – Banked table games at the Seminole Indian Casino in Immokalee, FL²⁹

²⁵ 25 U.S.C. 2710(d)(4)

²⁶ See generally *In re Indian Gaming Related Cases*, 331 F.3d 1094 (9th Cir. 2003)(upholding revenue sharing for where revenues were apportioned to non-gaming tribes)

²⁷ *Investing in Florida's Future*, Seminole Tribe of Florida Promotional Materials

²⁸ *Florida House of Representatives v. Crist*, 990 So. 2d 1035 (Fla. 2008).

²⁹ Dates and locations furnished to staff by the Seminole Tribe of Florida

The Tribe has been making revenue sharing payments to the state consistent with their position the now-voided Compact is still valid. To date, the Tribe has paid \$100 million to the State. The Legislature has not appropriated those funds.

PROPOSED CHANGES

Compact Introductory Recitals

Present Situation:

The voided Compact included language that the State has been directed by the federal government to enter into a compact in good faith without waiving the State's 11th Amendment sovereign immunity and that the Compact will generally benefit Florida "by increased tourism, increased local spending, job growth, and related economic development opportunities. "

Effect of PCB Changes:

The PCB empowers the Governor to enter into a new compact substantially in the form of a model compact. The model compact contains much of the substance of the voided compact which was invalidated by the Florida Supreme Court. However, the PCB significantly amends the provisions of the voided Compact. The language in the introductory recitals referring to the State being directed by the federal government to enter into a compact and the language in quotation marks are deleted from the PCB.

Legislative Ratification

Present Situation:

The voided Compact did not require ratification by the Legislature.

Effect of PCB Changes:

The PCB provides that a new compact must be ratified by the Legislature.

Location of Gaming Facilities

Present Situation:

The voided Compact listed the seven Tribal gaming facilities where gaming can take place under the Compact by mailing and street address and allowed the expansion or replacement of facilities on the same reservation with 60 days advance notice, subject to the number of facilities remaining the same.

Effect of PCB Changes:

The PCB makes minor format changes by deleting the mailing and street addresses, and instead listing the facilities by name, including the municipality (where applicable) and the county of location. The PCB also clarifies for purposes of expansion or replacement of facilities that both the number of facilities on a reservation and the number of *reservations* upon which Class III gaming is authorized must remain the same.

Covered Games

Present Situation:

The voided Compact includes slot machines as a Class III game that the Tribe is authorized to offer at its gaming facilities. The definition of the term "slot machines" in the voided Compact is identical to the definition contained in Chapter 551 relating to the regulation of slot machines at pari-mutuel facilities in Broward and Miami-Dade Counties. The definition specifically prohibits the use of credit or debit cards to play a slot machine. The voided Compact provided that if state law changes to authorize electronic payment systems allowing any person to use credit or debit cards to play or operate a slot machine then the same payment systems can be used by the Tribe. The voided Compact also authorized the Tribe to offer "banking or banked card games" such as baccarat, chemin de fer, and blackjack. The Compact specifically prohibited the Tribe from offering roulette, craps, roulette styled games or craps styled.

The voided Compact authorized the Tribe to conduct up to six celebrity/charity poker tournaments annually not subject to bet limits and hours of operation restrictions in state cardroom statute. The Compact required that minimum of 70% of "Net Poker Revenue" must be donated to a 501(c)(3) charity. "Net Poker Revenue" was defined as including all poker revenue, including buy-ins and re-

buys, less operating costs and overhead. Thus, any portion of "Net Poker Revenue" that was not donated to Charity would constitute "net win" from a covered game and would, therefore, be subject to revenue sharing under the terms of the Compact.

"Net Win" is the amount used to calculate the states revenue share and means the total receipts from all Covered Games less all prize payouts and *participation fees* which are the royalty or lease payments that the Tribe remits to companies for machines it does not own.

Under the provisions of the voided Compact the Tribe was required to convert 80% of its Class II machines to Class III machines within 48 months of the Compact's effective date and all of its Class II machines within 60 months of the effective date. The Tribe has converted more than 85% of their units to Class III slot machines.

The Tribe was also authorized to conduct, as covered games, any devices or games authorized for the Lottery by state law, as long as the Tribe did not offer those games through the internet, as well as any new game authorized by Florida law for any person for any purpose.

Effect of PCB Changes:

The PCB also authorizes the Tribe to conduct slot machine gaming at its facilities and defines slot machines using the identical definition contained in Chapter 551, relating to the regulation of slot machines in pari-mutuel facilities; however, the PCB provides that changes to the definition of slot machine in state law will also apply to the Tribe. Thus, if the slot machine definition in state law were changed to allow the use of debit or credit cards to play slot machines, that change would also apply to the Tribe. However, other future changes to the definition – including changes that expand or constrict the definition would also appear to apply to the Tribe.

The PCB also redefines the definition of "Net Win," the basis for determining the State's revenue share by dropping the deduction of participation fees.

The PCB raises the percentage of machines that the Tribe must convert to class III to 100% within 24 months of the Compact's effective date, which is the date that the Secretary of Interior first publishes notice of approval of the Compact in the Federal Register.

The PCB specifically excludes banking or banked card games, such as baccarat, chemin de fer and blackjack, as well as roulette and craps from the definition of "Covered Games."

Since the Tribe is currently offering banked card games at some of its facilities, the PCB requires the Tribe to stop offering those games within 90 days of Compact's effective date, and authorizes the State to seek an immediate injunction if the Tribe continues to offer any unauthorized Class III games.

Although the PCB authorizes the Tribe to offer celebrity/poker tournaments, it reduces the allowable number of tournaments from six to two and requires 100% of Net Poker Revenue to be donated to the appropriate charity. It also redefines "Net Poker Revenue" to preclude the deduction of operating costs and overhead. As a result of these changes, no revenue from the tournaments will be added to Tribal net win and, therefore, neither the State nor Tribe will profit directly from the tournaments; however, the amount of proceeds donated to charity will be maximized for an individual tournament.

The PCB also deletes the language in the voided Compact authorizing the Tribe to offer, as covered games, devices or games authorized for the Lottery or new games authorized by law for any person for any purpose.

Tribal Payments

Present Situation:

The Compact specifies that appropriation of revenue sharing payments lies within exclusive prerogative of Legislature, but that the Governor recognizes that both the State Lottery and the pari-mutuels that conduct slot machine gaming contribute to educational funding and that Tribal gaming facilities will fiscally impact localities where they are located; therefore, he recommends 95% of the

State's revenue share go to the Educational Enhancement Trust Fund which currently receives deposits from State Lottery sales and the tax revenue from pari-mutuel slot machine gaming. The remaining 5% is recommended for distribution to local governments (including both municipalities and counties) that are affected by Tribal gaming activities.

The Compact is for a duration of twenty-five (25) years or revenue cycles and in the first three years, guarantees minimum payments as follows: \$100M for the first year, paid in an initial, immediate payment of \$50M, followed by the payment of the remaining \$50M in equal monthly installments during the first and second revenue cycles; \$125M in equal monthly installments in the second revenue cycle, in addition to the carry-over payments from the first year; \$150M for the third revenue cycle, unless using the percentage rates applicable for calculating revenue sharing in the third or later years under the Compact would yield a greater amount to the State. After the third revenue cycle, the guaranteed minimum payment is set at \$100M per revenue cycle for the remaining duration of the Compact.

Unless the guaranteed minimum in the third year and beyond are greater, the State's revenue share is calculated by applying a graduated rate to the Tribe's "net win" as follows:

- 1) 10% of amounts up to \$2B;
- 2) 12% of the amount between more than \$2B and up to \$2.5B;
- 3) 15% of the amount between more than \$2.5B and up to \$3B;
- 4) 20% of the amount between more than \$3B and up to \$4B;
- 5) 22.5% of the amount between more than \$4B and up to \$4.5B;
- 6) 25% of the amount that is more than \$4.5B.

Effect of PCB changes

The Governor's language recommending how to appropriate revenue sharing payments is removed from the PCB; however, the bill contains a compact term reciting that the Tribe agrees to pay an additional 5% of its annual revenue share to the State to offset local government impacts. The PCB does not appropriate the State's revenue share or designate how it should be appropriated.

The PCB also addresses payments that already have been made by the Tribe in accordance with the voided Compact. The PCB provides that those monies are deemed forfeited by the Tribe and released to the State without further obligation and that the State's acceptance of the monies does not constitute in any manner either validation of the compact or the operation of Class III games under the voided Compact.

The PCB also clarifies the language relating to cessation of payments by adding the language shown in *italics* to the provision: "It is understood . . . [that the] Compact, which provides . . . for a cessation of the Payments does not create any duty on the State of Florida but only a remedy for the Tribe if Class III gambling under state jurisdiction is expanded *by an act of the Legislature* . "

Rather than providing for variable guaranteed minimum annual payments, the PCB provides for a non-variable \$100M guaranteed minimum annual payment. In addition, rather than calculating the State revenue share using an escalating percentage of graduated net win, the PCB uses a flat rate of 18% of net win to determine the annual revenue share, to the extent the flat rate would exceed the guaranteed minimum annual payment.

Exclusivity

Present Situation:

In addition to the game exclusivity provided to the Tribe to conduct banking or banked card games, the voided Compact contained the following geographic exclusivity provisions that if breached or violated, affected the Tribe's obligation to make revenue sharing payments:

- 1) All payments from the Tribe stopped if any new Class III games or Class II bingo machines or video lottery terminals were authorized for non-tribal facilities outside Broward or Miami-Dade Counties. For example, if pari-mutuel facilities or the State Lottery in other counties were allowed to offer Class III games or Class II machines; however, payments would resume if the operation of those games ceased.

2) All payments stopped if Class III slots were authorized in Miami-Dade by local referendum or other Class III gaming was expanded within Broward or Miami-Dade, and, in either situation tribal gaming revenues fell below \$1.37 billion. However, tribal payments resumed, under either of the scenarios, whenever tribal revenues once again rose to or above \$1.37 billion.

Effect of PCB Changes:

The PCB does not grant the Tribe exclusivity to offer banking or banked card games. The PCB does allow the Tribe exclusivity in regard to offering Class III slots outside Broward and Miami-Dade Counties.

The bill specifically provides that if any new Class III games or Class II bingo machines or video lottery terminals are authorized outside Broward or Miami-Dade Counties then the Tribe may stop making revenue sharing payments and is not required to resume payments until the operation of such games ceases; however, new Class III gaming expansion in Broward or Miami-Dade Counties is not a breach or violation of exclusivity.

The PCB also specifies that it is not a breach or violation of exclusivity if gambling on new Class III games or Class II machines occurs as a result of a citizen's initiative, and Tribal net win on Covered games and Class II machines stays above \$1.37 billion.

State Oversight and Independent Audits

Present Situation:

Under the voided Compact the State Compliance Agency may inspect any covered games at a Tribal facility during normal business hours, on a random basis, four times annually at each facility. The State Compliance Agency must notify the Tribal Commission at or prior to the inspection. Two hours notice is required for the inspection of non-public areas in order to assure a Commission officer is available to accompany the representatives of the State Compliance Agency.

Annually, the State may secure an independent audit of covered game revenues, which include only matters necessary to verify net win and the basis of, and right to, the payments.

Effect of PCB Changes:

The PCB provides for unlimited inspections and clarifies that no advance notice is required for inspecting the public areas of a facility, but specifies that the State Compliance Agency will notify the Commission of their presence and will provide one hour notice to Commission when the inspection will include non-public areas of the facility.

Language is added by the PCB to clarify that the independent audit includes verifying the "amount of the payments the Tribe is obligated to make to the State."

Patron Disputes

Present Situation:

The voided compact required all disputes to be resolved in accordance with the Tribal Gaming Code. A Patron who claimed to have been injured in the area of a facility where Covered Games are played was required to give notice of injuries within 6 months or the claim was forever barred. The Compact did not provide a specific time limit within which the Tribe had to respond to a patron tort claim. Venue for claim was in any court of competent jurisdiction in Broward County, subject to the exhaustion of Tribal remedies under the Compact, and a 4 year statute of limitations.

The Tribe waived its sovereign immunity up to a \$100,000 per person and \$200,000 per occurrence, including punitive damages. The Compact did not require the Tribe to carry liability insurance for injuries.

Effect of PCB Changes:

The PCB adds clarifying language that patron disputes involving gaming (not all disputes) must be resolved in accordance with code. It also clarifies that liability for injury extends to the entire gaming facility not just area where gaming takes place. The PCB removes the language barring claims for

injuries unless notice given within 6 months. The PCB adds requirement that the Tribe must respond to a patron tort claim within 10 days.

The PCB does not limit venue to Broward County; instead, it authorizes venue in any court of competent jurisdiction in the county where the incident occurred. The PCB removes the language that required the exhaustion of Tribal remedies before bringing suit and adds language authorizing a patron asserting a tort claim against the Tribe to immediately file a suit in any court of competent jurisdiction without resorting to or exhausting tribal remedies.

The PCB also removes the provision including punitive damages within the monetary liability caps and raises the recovery caps to \$500,000 per person and \$1,000,000 per occurrence.

The PCB provides the Tribe must maintain commercial general liability policy of no less than \$1,000,000 per occurrence and \$10,000,000 in the aggregate, for bodily injury, personal injury and property damage arising out of, connected with, or relating to the operation of facilities where covered games are offered.

State / Tribal Dispute Resolution

Present Situation:

The voided Compact provided that if mediation is used by the parties to resolve a dispute, the duration of the mediation is limited to no more than sixty (60) calendar days, unless an extension of the time limit is negotiated by the parties. Venue is in Federal District Court; if the federal court declines jurisdiction or precedent precludes jurisdiction, then the state may bring a state action in Broward County.

The Tribe waives its sovereign immunity from suit under the Compact, but the waiver does not extend to any third party who is joined or intervenes, and if a third party's participation would result in the waiver of sovereign immunity as to that third party, then the Tribe may revoke its waiver of sovereign immunity entirely.

Effect of PCB Changes:

The PCB provides that an extension of the 60 day time limit applicable to the duration of mediation may be "mutually agreed to" rather than requiring the parties to negotiate an extension. The PCB authorizes venue in any court of competent jurisdiction, not limiting the venue of actions to resolve a dispute to federal district court or a state court in Broward County. The PCB also removes the language that authorized the tribe to revoke its waiver of sovereign immunity when a third party's participation would result in waiver as to the third party.

Employees /Compulsive Gambling/Licensing and Hearing Requirements

Present Situation:

The voided Compact requires the training of employees concerning identifying patrons who have a compulsive gambling problem. It also requires them to comply with all licensing and hearing requirements in federal law and in the Tribal gaming code.

Effect of the PCB Changes:

In addition to requiring training of employees the PCB requires that covered game employees be screened for compulsive gambling habits. The PCB also requires the Tribal Gaming Commission to notify the State Compliance Agency of any disciplinary hearings or revocation or suspension of licensees.

Amendment of the Compact or Tribal Rules & Regulations

Present Situation:

The voided Compact provided that amendment of the Compact must be by "written agreement of the parties" subject to approval of the Secretary of the Interior. In addition, provisions in the voided Compact provided for construing the Compact in a manner not to affect the Tribe's right to amend its rules & regulations, so long as the amendments are in conformity with Compact.

It also provided that all facilities must be operated in "strict compliance" with tribal internal control standards (TICs) that meet or exceed National Indian Gaming Commission's minimum internal control standards (MICs). Language in the voided Compact provided that: "The Tribe's programs and policies related to . . . [alcoholic beverages] are located in the Tribe's Alcoholic Beverage Control Act, and the Tribe shall maintain these (or stricter and/or more extensive) programs and policies for the duration of this Compact."

Effect of PCB Changes:

The PCB provides that an amendment to the Compact must be by "written agreement of the parties" subject to approval of Secretary of Interior; however, the PCB further requires that any amendments to the Tribes rules and regulations are "subject to approval of the State Compliance Agency. Additionally, the Tribe must give the State 30 days advance notice, and if the State objects to the amendment on the basis that it violates the Compact, the State may invoke dispute resolution.

The PCB adds a requirement that both the facilities and "covered games" must be conducted in the strict compliance with applicable minimum internal control standards.

The PCB changes the language related to alcoholic beverage regulation to provide: "The Tribe shall maintain these programs and policies in its Alcohol Beverage Control Act for the duration of the Compact, but may replace such programs and policies with either stricter or more extensive programs and policies."

Sales Tax Collections

Present Situation:

The voided Compact did not contain any provisions relating to the payment of state sales tax on all sales to non-tribal members.

Effect of PCB Changes:

The PCB requires the Tribe to collect and remit the sales taxes imposed by Chapter 212 on all sales to non-tribal members, to register with the Department of Revenue for purposes of remitting sales taxes, and to retain records of all sales to non-tribal members for at least five years. The Department of Revenue is authorized by the PCB to annually audit collections, and the Tribe must provide the Department reasonable access during normal operating hours to records of sales transactions subject to taxation.

The PCB provides that the Tribe waives immunity from suit enforcement and for damages up to the amount of taxes owed for disputes over collections.

Compact Term

Present Situation:

The voided Compact provided for a term of twenty-five years unless terminated sooner by mutual agreement of the parties.

Effect of PCB Changes:

The PCB shortens the term to ten years.

Severability

Present Situation:

The voided Compact contained a severability clause that each provision of the Compact stands separate and independent of every other provision. In the event that a federal district court in Florida or other court of competent jurisdiction shall find any provision the Compact invalid, the remaining provisions the Compact remained in full force and effect, provided that severing the invalidated provision did not undermine the overall intent of the parties.

Effect of PCB Change:

The PCB provides that if any provision is held by a court of competent jurisdiction to be invalid, the Compact becomes null and void.

B. SECTION DIRECTORY:

Section 1. Creating Section 285.711, Florida Statutes.

Part I. Providing a title: "Seminole Tribe of Florida and State of Florida Gaming Compact."

Part II. Recitals. setting forth the purposes for entering into a Compact between the Seminole Tribe of Florida and the State of Florida, including the impetus of the Indian Gaming Regulatory Act, the mutual benefits to the parties, and the recognition of the respective sovereigns.

Part III. Definitions. Defining "Annual Oversight Assessment"; "Class III gaming"; "Commission"; "Compact"; "Covered Game" or "Covered Game Activity"; "Covered Game Employee" or "Covered Employee"; "Documents"; "Effective Date"; "Facility" or "Facilities"; "Guaranteed Minimum Payment"; "IGRA"; "Net Poker Income"; "Net Win"; "Non-tribal member"; "Patron"; "Reservation"; "Revenue Share"; "Revenue Sharing Cycle"; "Rules and Regulations"; "State"; "State Compliance Agency" ("SCA"); and "Tribe".

Part IV. Authorization and Location of Covered Games. Authorizing Covered Games and specific locations where Covered Games could be conducted, including expansion of Facilities.

Part V. Rules and Regulations; Minimum Requirements for Operations. Providing for rules and regulations; providing minimum requirements for operations; requiring certain procedures and signs relating to compulsive gambling; providing a limitation of liability for failing to identify a compulsive gambler; requiring certain procedures to prevent certain activities; providing for staff training, screening, and certification, patron education, and security measures; prohibiting a person under a certain age from playing the games; requiring certain recordkeeping by the Tribe and the Seminole Tribal Gaming Commission; requiring the Tribe to stop certain card games.

Part VI. Patron Disputes; Workers Compensation; Tort Claims; Prize Claims; Limited Consent to Suit. Providing for patron dispute resolutions; employee tort claims; employee disputes; patrons tort claims; requirements for general liability coverage.

Part VII. Enforcement of Compact Provisions. Providing for enforcement of compact provisions; providing responsibilities of the Tribe and the Commission; providing that the Tribe and the Commission shall be responsible for regulating activities; providing requirements for construction, operation, and maintenance of facilities and the conduct of games; providing for members and employees of the commission; providing requirements for licensing members and employees; providing for commission compliance officers; requiring representatives of the commission and the State Compliance Agency to meet to review practices and examine methods to improve the regulatory scheme;

Part VIII. State Monitoring of Compact. Authorizing the State to secure an annual independent financial audit of the conduct of the games; providing requirements and limitations for such audit; authorizing the State Compliance Agency to monitor the conduct of the games, inspect any games in operation, and perform one annual review of the slot machine compliance audit for certain purposes; authorizing that agency to meet with the tribe's Internal Audit Department for Gaming to review internal controls and violations; providing procedures inspections and for suspected or claimed violations; providing for construction and application of the Compact; providing licensing and hearing requirements.

Part IX. Jurisdiction. Providing for construction and application of the compact.

Part X. Licensing. Providing licensing and hearing requirements as set forth in 25 C.F.R. Parts 556 and 558 and Articles IV-VI of the Seminole Tribal Gaming Code.

Part XI. Payments to the State of Florida. Providing payment schedule for Tribe's payments to the State 18% of net wins with minimum of \$100,000,000 per year; outlining exclusivity; providing for Annual Oversight Assessment and payments for local governments; providing that certain prior payments shall be deemed forfeited and released to the State; providing that acceptance and appropriation of such funds does not legitimize, validate, or otherwise ratify any previously proposed compact or the operation of Class III games by the Tribe prior to the effective date of this compact.

Part XII. Reduction of Tribal Payments Because of Loss of Exclusivity or Other Changes in Florida Law. Providing the Tribe with the right to operate such games on an exclusive basis; providing for reduction of tribal payments because of loss of exclusivity or other changes in state law; providing for exceptions to the exclusivity.

Part XIII. Dispute Resolution. Providing procedures for resolution of disputes among the parties and for interpretation of the Compact; requiring notice of a claim of noncompliance; authorizing nonbinding arbitration and providing procedures; providing that for certain purposes the tribe waives rights to immunity from suit and enforcement of judgment.

Part XIV. Collection of Sales Tax on Sales to Non-Tribal Members. Collecting and remitting sales tax on sales to non-tribal members; Tribe registration with Department of Revenue; retention of non-tribal members sales; disputes.

Part XV. Construction of Compact; Severance; Federal Approval. Providing for courts finding Compact invalid; Legislative authorization; cessation of payments to the State and expansion by Legislature; provisions of the Indian Gaming Regulatory Act and future changes to the IGRA; terms of compact related to future tribal-state compacts; approval by Secretary of the Department of the Interior.

Part XVI. Notices. Providing notice requirements.

Part XVII. Effective Date & Term. Providing approval by the Secretary of the Department of the Interior as effective date and term of ten (10) years.

Part XVIII. Amendment of Compact and References. Providing for amendment of Compact and references.

Part XIX. Miscellaneous. Providing for application to third parties; providing for application to any compact with any other tribe; providing for events beyond the Tribe's control; providing for smoke-free or reduced-smoke environments; providing for minimum pay-out; providing for effect of compact on agreements entered into between the Tribe and any other federal, state, or local governmental entity; providing for employment practices.

Section 2. Providing the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated the fiscal impact to the General Revenue Fund in FY 2009-10 to be a positive \$257.2 million and in FY 2010-11, a positive \$282.9 million.

To date, the State has been paid \$100 million dollars by the Tribe, which presently is kept in the General Revenue Fund and has not been appropriated for any purpose.

2. Expenditures:

Indeterminate. Direct costs of regulation are able to be recovered pursuant to the terms of the bill. According to testimony presented to the committee, there will be additional expenditures in law

enforcement, courts, infrastructure and social services as an indirect result of increased gaming activities that will not be covered.³⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill provides that some monies – specifically, an additional five percent of net win from Covered Games – shall be paid to the state to be used to offset the impacts to local governments; however, it does not specify the how those funds will be apportioned. Extrapolating from the REC figures, \$12.9 million would be allocated to local governments in FY 2009-10 and 14.1 million in FY 2010-11.

2. Expenditures:

Indeterminate. According to testimony presented to the committee, there will be additional expenditures and impacts on local government infrastructure as result of increased gaming activities.³¹

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes a gaming compact with the Seminole Tribe of Florida that would permit the Tribe to conduct Class III slot games at seven tribal locations. Slot machines are one of the more lucrative forms of gaming and generate a majority of the revenues for casinos that offer such games. As such, it would appear the authorization of a compact that provides the Tribe with the ability to conduct Class III slots machines while granting a partial geographic monopoly for exclusivity of such games does provide a valuable economic benefit to the Seminole Tribe.

Additionally, \$2.9 billion in resort construction and facility development are planned by the Seminole Tribe, approximately \$2 billion of which will be spent in Florida.³² This will result in almost 11,000 jobs for the construction and remodeling of the Tribe's facilities.³³ The Seminole Tribe would see the addition of 18,000 jobs related to the casinos (1,983 related to table games), resorts, restaurants, entertainment centers and retail outlets as a result of the planned expansion.³⁴ These figures do not include anticipated indirect benefits related to the development and expansion activities. Also, these figures do not reflect a net direct gain to the State due to phenomena of cannibalization, i.e., the shifting of resources or revenues from one activity to another versus the addition of new resources or revenues.

The authorization of a compact, standing alone, will likely have a negative impact on some parts of the private sector. According to testimony of Eugene Christiansen and Sebastian Sinclair, Christiansen Capital Consultants, LLC, presented to the Committee on March 4, 2009, there will be some cannibalization of present gaming activity resulting in lost revenues to pari-mutuel facilities. Mr. Christiansen and Sinclair noted that, although pari-mutuel facilities are in general decline, the increased competition from the Tribe would hasten that decline.

Additionally, committee testimony indicated that the resort, convention, lodging and leisure industries will likely be negatively impacted by the Tribe's activities as a result of cannibalization. The resort and convention industries alone are estimated to experience a loss of \$100 million in revenues as a result of competition from the Tribe's contemplated resorts and convention centers.³⁵

³⁰ Presentation of Dr. Earl Grinols, Baylor University, before the Select Committee in March 27, 2009.

³¹ Presentations of City Managers: David Rivera, City of Coconut Creek and Francis Porcella, City of Margate, March 27, 2009

³² Report by the Innovation Group, "Economic Impact Analysis: Seminole Tribe of Florida", October 2008, p. 26-27.

³³ See id.

³⁴ See id., p. 28

³⁵ Presentation of Amy Baker, Office of Economic and Demographic Research, March 20, 2009

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES