



Seminole Gaming Compact

HB 7221 by Select Committee on Seminole Indian Compact Review and Galvano

- In 2004, Florida voters passed a constitutional amendment authorizing Class III gaming in Miami-Dade and Broward Counties. That amendment triggered the Seminole Tribe being able to operate Class III gaming without sharing revenues with the state.
- That amendment, coupled with Governor Crist's 2007 compact authorizing the Seminoles to operate banked card games placed the Legislature in an unfavorable and difficult position regarding Seminole gaming.
- The House filed a lawsuit against Governor Crist and had the initial compact invalidated. Unfortunately, the Obama Administration and the Department of Interior were unwilling to exercise their responsibility to shut down the unauthorized gaming at casinos in our state.
- Faced with that reality, the House sought to limit the broad reach of the Governor's initial compact and limit the Tribe's ability to expand banked card games like Blackjack throughout Florida.
- While limiting the expansion of such games, the financial benefits to the state also far outweigh the earlier (and, as ruled, unlawful) efforts of the governor to negotiate an effective agreement.
- House Bill 7221 demonstrates that waiting to get a better Compact is far more important than taking the first offer provided to the Governor by the Tribe.

History

Indian Gaming Regulatory Act of 1988

The Indian Gaming Regulatory Act of 1988 provides that before an Indian tribe may lawfully conduct Class III gaming, certain conditions must be met. 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 games of chance, and pari-mutuel wagering.

Initial negotiations on a Seminole Gaming Compact began in 1991. In 1996, the Clinton Administration authorized the Tribe to conduct Class III gaming, but later rescinded that authorization when the state challenged the decision.

In 2004, a constitutional amendment was passed in Florida that allowed Class III gaming for licensed pari-mutuel facilities (thoroughbred and harness racing, greyhound racing, and jai alai) in Broward and Miami-Dade Counties. Federal law allows tribes to play the same games authorized by State law for any person for any



purpose. The level and location of these types of gaming have been the source of litigation and negotiations since that expansion.

Challenges to Prior Compacts

Under the auspices of this act, the Tribe and Governor Crist entered into a Tribal-State gaming compact on November 14, 2007. This represented a substantial difference from the position of previous governors. In fact, Governor Crist's Compact made it difficult, if not impossible, to prevent the tribe from running blackjack or other banked card games. The compact was challenged by the Florida House of Representatives in the Florida Supreme Court against Charles Crist in his capacity of Governor of the State of Florida.

The Florida House of Representatives maintained that the Governor encroached on the powers of the Legislature and that the execution of the compact violated the Separation of Powers doctrine under Article II, section 3 of the Florida Constitution.

The Florida Supreme Court, in *Florida House of Representatives and Marco Rubio v. Crist and The Seminole Tribe of Florida*, would eventually hold that "the Governor's execution of a compact authorizing types of gaming that are prohibited under Florida law violates the separation of powers. The Governor has no

authority to change or amend state law. Such power falls exclusively to the Legislature. Therefore, we hold that the Governor lacked authority to bind the State to a compact that violates Florida law as this compact does."

The court held that while it is undisputed that Florida allows some gaming that is considered to be Class III gaming under the Indian Gaming Regulatory Act (such as the Florida Lottery and slot machine gaming at South Florida pari-mutuel facilities), "Florida law prohibits banked card games," and "Blackjack, baccarat, and chemin de fer are banked card games. They are therefore illegal in Florida."

SB 788 and the Second Compact

In response to the Court's decision, the Legislature sought federal enforcement, which has still not occurred. It also asserted its responsibility to set the parameters within which a Gaming Compact would be ratified. This was accomplished through the passage of SB 788 during the 2009 Legislative Session. It set the standards by which a new Compact could be negotiated.

A Compact was again negotiated by Governor Crist in advance of the August 31 deadline, but it failed to meet standards set forth by the Legislature and was consequently rejected in January of this year.



Bill Details

Authorized Gaming

The Tribe has agreed to pay the state a guaranteed minimum of \$1 billion over five years, a larger guarantee than that included in CS/CS/SB 788 and the August 31 Proposed Compact. In exchange for partial but substantial exclusivity, the Seminole Tribe of Florida is authorized to operate Class III slot machines, raffles and drawings, and any new game authorized by Florida law for any person at all seven of its tribal casinos for 20 years and card games at its tribal casinos in Broward, Collier, and Hillsborough for five years.

The 2007 and 2009 compacts signed by the Governor authorized banked card games at seven tribal facilities. This compact limits the number to five facilities.

If the Legislature does not renew the compact by affirmative act at the end of 5 years, the Tribe is required to cease operating card games within 90 days. If the Tribe does not cease operations, the State is entitled to seek immediate injunctive relief in court. The Tribe has waived its sovereign immunity.

The state may authorize additional gaming at the existing pari-mutuel facilities in Broward and Miami-Dade, but this can cause limited revenue sharing impacts if the Tribe's revenues in Broward decline.

If the State expands Class III gaming or other casino style games in Broward and Miami-Dade at locations other than existing pari-mutuel facilities, the revenue share generated from the Tribe's facilities in Broward will cease. If the state expands Class III gaming or other casino style games outside of Broward and Miami-Dade, the revenue sharing with the State shall cease, and all existing lawful gaming activity as of Feb. 1, 2010, including poker, penny ante poker, bingo dominoes and all the current Lottery games, will be grandfathered.

Regulatory Oversight

Patron claims related to gaming and worker's comp claims are handled pursuant to tribal ordinance, and patron tort claims must be noticed to the Tribe within 3 years of the occurrence and must go through tribal procedures, essentially working with the Tribe's insurer. A patron may file suit within one year after providing notice to the Tribe, possibly sooner if the Tribe fails to respond to the initial notice.

The State has the right of oversight to ensure the Tribe is complying with the Compact, including the established gaming procedures, and to ensure the State is being paid what it is owed under the revenue sharing agreement.

State on-site regulation activities are capped at 1200 hours for inspections and audit reviews, and the annual oversight assessment is capped at \$250,000.



The Tribe must have a minimum payout of 85% per facility for slot machines and has agreed to provide non-smoking gaming areas. Also, the Tribe has agreed to pay \$1.75 million to help fund the Florida Council on Compulsive Gaming.

Specific Revenue Sharing in New Compact

The \$250 million already paid by the Tribe to the State will be held in General Revenue and be available for appropriation.

The Compact provides for a guaranteed minimum payment of \$1 billion dollars over 5 years, \$250 million more than what was set forth in the both SB 788 and the August 31 proposed compact: \$150 million per year in the first 2 years of the Compact, a guaranteed minimum of \$233 million per year in years 3 and 4, and \$234 million in year 5.

After the first two years, the Tribe would pay the state the greater of the guaranteed minimum or a graduated percentage of net win:

- 12% of net win up to \$2.0 billion;
- 15% of the net win from \$2.0 billion up to and including \$3.0 billion;
- 17.5% of the net win from \$3.0 billion up to and including \$3.5 billion;
- 20% of the net win from \$3.5 billion up to and including \$4.0 billion;
- 22.5% of the net win from \$4.0 billion up to and including \$4.5 billion; and
- 25% of the net win over \$4.5 billion.

Net win is defined as the total receipts from the play of all Covered Games less all prize payouts and free play or promotional credits issued by the Tribe.

At the end of 5 years and in the absence of a new Compact, there are no guaranteed minimums. The revenue share payment for the remaining 15 years of the slots only compact would be based on the Tribe's net win outside Broward, provided they maintained the exclusivity that justifies the revenue sharing.