**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

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| BILL: | CS/SB 788 |
| INTRODUCER: | Regulated Industries Committee and Senator Jones |
| SUBJECT: | A Gaming Compact Between the State of Florida and the Seminole Tribe of Florida |
| DATE: | March 25, 2009 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Oxamendi | Rhea | RI | **Fav/CS** |
| 2. | | | JU | |
| 3. | | | FT | |
| 4. | | | WPSC | |
| 5. | | | RC | |
| 6. | | | | |

## Please see Section VIII. for Additional Information:

| | | |
|---|---|---|
| A. COMMITTEE SUBSTITUTE..... | X | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## I. Summary:

This bill provides that the compact executed by the Governor and the Seminole Tribe of Florida (Tribe) in November 2007 is not approved or ratified. It grants the Governor the authority to execute an Indian gaming compact on behalf of the state for the purpose of authorizing Class III gaming on the Tribe's lands. The bill provides the minimum terms and standards required for the compact to be valid. A negotiated compact and amendments to the compact do not require Legislative approval or ratification if they are consistent with the minimum terms and standards in this act. The Governor's authority under this act expires at the end of the day on December 31, 2009. It designates the Division of Pari-mutuel Wagering as the agency responsible for oversight of the state's responsibilities under the compact.

The bill requires a compact negotiated under the act to permit the Tribe to conduct banked card games, including baccarat, chemin de fer, and blackjack (21) if the licensed pari-mutuel facilities in Miami-Dade and Broward Counties become authorized to offer the play of blackjack. The bill requires a compact negotiated under the act to permit the Tribe to conduct roulette and craps.

The bill requires that the compact provide for revenue sharing through periodic payments to the state. The revenue sharing must be deposited in the Education Enhancement Trust Fund. The bill

requires revenue sharing of $400 million if net win in any cycle is less than or equal to $2 billion. It requires revenue sharing of $400 million plus 10 percent of net win for any net win that is more than $2 billion and less than or equal to $4 billion. If net win in any cycle is more than $4 billion, revenue sharing for that cycle would be $600 million plus 25 percent of net win that is over $4 billion. The bill provides that revenue sharing may be reduced, but not eliminated, if the net win in any cycle fails to reach $1.37 billion. It provides that the revenue sharing is in addition to assessments by the state that are necessary to defray its regulatory responsibilities. The bill permits a reduction in revenue sharing, but not its elimination, if additional Class III gaming activities are authorized anywhere in the state after the effective date of this act. However, there would be no reduction for any Class III gaming in Gadsden, Liberty, and Liberty Counties or west of those counties. The bill would permit the state to retain all the payments that the tribe has been making to the state under the terms of the invalidated compact. The bill also provides that revenue sharing shall not be reduced if historic racing or additional Class II gaming is authorized in this state.

The bill also:

- Limits the terms of the compact to 25 years;
- Provides for the state's monitoring of the Tribe's compliance with the compact, including requirements related to inspections and audits;
- Requires the Tribe to comply with building code standards that are at least as stringent as the Florida Building Code;
- Requires that the Tribe meet specified environmental requirements;
- Requires written, reasonable procedures for the disposition of tort claims;
- Requires that the Tribe maintain a policy of commercial general liability insurance with a combined single limit for personal injury and property damage of not less than $2 million per occurrence and in the aggregate;
- Requires a waiver of sovereign immunity by the tribe up to the $2 million insurance coverage, adjusted for increases in inflation;
- Requires the Tribe use its best efforts to spend its revenue in this state to acquire goods and services from Florida-based vendors, professionals, and material and service providers;
- Specifies a process for resolving compact disputes through presuit nonbinding arbitration;
- Requires that the Tribe provide a process for employee disputes that permits the employee to be represented by an attorney or other legally-authorized representative, and that permits the employee to use language interpreters, including interpreters for the deaf or hard of hearing; and
- Provides legislative intent to review the compact every 5 years in order to consider the authorization of additional Class III games.

The CS authorizes the Governor to execute an agreement on behalf of the state with the Indian tribes for the purpose of negotiating agreements to develop and implement a fair and workable arrangement regarding the application of state taxes on persons and transactions on Indian Lands. It requires that such an agreement must be approved or ratified by the Legislature.

This CS would take effect on the same date that section 1 of SB 836, or similar legislation, takes effect if adopted during the 2009 legislative session, or an extension thereof, and becomes law.

This bill creates unnumbered sections of the Florida Statutes.

## II. Present Situation:

Currently, there is no statutory authority relating to tribal-state compacts in Florida. Governor Crist and the Tribe a compact authorizing the Tribe to conduct banked card games, including blackjack (21), baccarat, and chemin de fer (a French form of blackjack), that are illegal in Florida. The ensuing legal challenge to the Governor's authority to enter into the compact resulted in a Florida Supreme Court decision that held that the Governor did not have the legal authority to change or amend state law to permit the Tribe to conduct games that are illegal in Florida.[1]

**Indian Gaming Regulatory Act of 1988**

Gaming on Indian lands is governed by the Indian Gaming Regulatory Act (IGRA).[2] The Indian Gaming Regulatory Act 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.[3]

"Class II gaming" includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo.[4] 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. [5] 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.[6]

"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.[7]

The Indian Gaming Regulatory Act provides that before an Indian tribe may lawfully conduct Class III gaming, certain conditions must be met. First, the particular form of Class III gaming

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[1] *Florida House of Representatives, et al. v. The Honorable Charles J. Crist, Jr., etc.*, 990 So.2d 1035 (Fla. 2008).
[2] Indian Gaming Regulatory Act of 1988, Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 et seq.
[3] 25 U.S.C. s. 2703(6).
[4] 25 U.S.C. s. 2703(7).
[5] 25 U.S.C. s. 2703(7)(A)(ii).
[6] 25 U.S.C. s. 2710(b)(1).
[7] 25 U.S.C. s. 2703(8).

that the tribe wishes to conduct must be permitted in the state in which the tribe is located. Second, the tribe and the state must have negotiated a compact that has been approved by the Secretary of the United States Department of the Interior and is in effect. Third, the tribe must have adopted a tribal gaming ordinance that has been approved by the Indian Gaming Commission or its chairman.[8]

**The Seminole Gaming Compact**

The Tribe and Governor Crist entered into a Tribal-State gaming compact pursuant to the Indian Gaming Regulatory Act of 1988 on November 14, 2007. The term of the compact is 25 years. The Miccosukee Tribe of Indians of Florida is not a party to the compact.

***Covered Games***

The Class III games purported to be authorized by the compact, which the compact refers to as "covered games," were:

- Slot machines, as defined in s. 551.107, F.S.;
- Banking or banked card games, including baccarat, chemin de fer, and blackjack (21);
- Charity celebrity poker games;
- Any device or games authorized under state law to the Florida Lottery; and
- Any new game authorized by Florida law for any person for any purpose.

The compact does not permit the Tribe to conduct traditional casino games such as craps, roulette, and keno.

The compact authorizes the Tribe to operate the covered games on its Indian lands at its seven existing gaming facilities. Except for the provisions in the payments section, nothing in the compact limits the Tribe's right to operate any game that is Class II under IGRA.

***Revenue Sharing***

In consideration for the right to conduct the covered games in Florida on an exclusive basis (this is known as "exclusivity") the compact provides for revenue sharing by the tribe based on the tribes net win from all of the "covered games." "Net win" is defined in the compact as:

> The total receipts from the play of all Covered Games less all prize payouts and participation fees.

The term "net win" used in the compact is not a term used in IGRA. The term "net win" differs from the definition of the term "net revenues" in IGRA, which defines the term "net revenues" to mean:

[8] 25 U.S.C. s. 2710(d).

> Gross revenues of an Indian gaming activity less amounts paid out as, or paid for, and total operating expenses, excluding management fees.[9]

The Indian Gaming Regulatory Act does not explicitly provide for revenue sharing by the Indian tribe to the state, but it does not prohibit such arrangements. Based upon a review of tribal-state gaming compacts throughout the United States, it appears that 25 percent is the highest level of revenue sharing that has been approved by the Secretary of the United States Department of the Interior (Secretary of Interior).

The Compact provides the following payment schedule for the revenue sharing:

- The Tribe will pay the State upon federal approval of the Compact $50 million as an advance against the Guaranteed Payment of $100 million from the first Revenue Sharing Cycle.
- The Tribe will pay $25 million in equal installments over the course of 12 months of the first Revenue Sharing Cycle to go toward the guaranteed annual minimum of $100 million for a total of $75 million the first year.
- The remaining $25 million from the first Revenue Sharing Cycle will be paid in equal installments over the course of the 12 months of the second Revenue Sharing Cycle. The Tribe will also pay the State $125 million in equal installments over 12 months in addition to the carry over payments from the first year for a total of $150 million in the second year.
- For the third Revenue Sharing Cycle, the Tribe will guarantee $150 million if the Revenue Share calculated for that cycle is less the guaranteed minimum payment.
- For every cycle after this the guaranteed payment is $100 million, if the Revenue Share is less than the Guaranteed Minimum Payment.
- For the third through 25th Revenue Sharing Cycles – Payments will be calculated on a sliding scale:
    - Up to $2 billion, 10 percent
    - More than $2 – $2.5 billion, 12 percent
    - More than $2.5 – $3 billion, 15 percent
    - More than $3 – $4 billion, 20 percent
    - More than $4 – $4.5 billion, 22.5 percent
    - More than $4.5 billion, 25 percent

***Reduction of Tribal Payments***

The compact provides the Tribe with partial but substantial exclusivity consistent with the goals of IGRA. Payments to the state will cease if any Class III gaming is authorized in any area of the state, except Miami-Dade and Broward Counties, that is not presently authorized, including electronically-assisted bingo or pull-tab games, video lottery terminals; or any similar games that allow direct operation of the games by customers of the Florida Lottery.

Payments will also cease if:

[9] *See*, 28 U.S.C. s. 2703(9).

- Miami-Dade voters approve slot machines at the pari-mutuel facilities and the Tribe revenue from slot machines and bingo machines drops below $1.37 Billion.[10]
- The state does not act in good faith to stop any illegal gaming reported to it by the Tribe.
- Any provision relating to covered games, payments, or reduction in payments or exclusivity, is held by a court of competent jurisdiction to be invalid, the Compact will become null and void.

Breach of exclusivity does not excuse the Tribe from continuing to comply with all other provisions of the Compact.

Exceptions to the exclusivity provisions are made for Class III gaming for other Indian Tribes, e.g., the Miccosukee Tribe.

***Other Provisions***

The compact also requires that the Tribe:

- Maintain a comprehensive compulsive gambling prevention program;
- Submit revenues to an independent annual financial audit;
- Comply with national gaming standards, state building codes and inspections;
- Make provisions for smoke-free gaming;
- Limit the age of its patrons to 21 years of age and older; and
- Submit to an independent audit of the gaming operations.

Regarding employee and patron disputes, tort claims, suits, the compact:

- Requires that the tribe maintain a legal process for compensating employees and patrons for injuries through insurance and worker's compensation remedies.
- Provide a 4-year statute of limitations which runs from the date of the injury.
- Provides a cap on recovery in the amount of $100,000 per person and $200,000 per incident and the tribe waives its sovereign immunity up to that amount.

The compact provides for state monitoring of the compact. It provides that the Tribe and the Indian Gaming Commission are responsible for regulating the activities pursuant to the compact. It gives the "state compliance agency" (SCA) the right to monitor the conduct of the covered games. Agents of the SCA have the right of access to the public areas without prior notice. The SCA may randomly inspect the operation of the covered games up to 4 times per year with notice during normal business hours.

The compact provides an "annual oversight assessment" to reimburse the state for the cost of operation of the SCA. The amount of the "annual oversight assessment" is determined and paid in quarterly installments.

[10] The compact was executed before the voters of Miami-Dade County approved the play of slot machines at pari-mutuel facilities in that county in January, 2008.

It provides for mediation of disputes and if mediation fails to resolve the dispute, the parties may file a cause of action in the federal court. If the federal court refuses jurisdiction, the parties may file a cause of action in state court in the Seventeenth Judicial Circuit (Broward County).

The compact provides that the Tribe agrees to maintain employment standards that are comparable to federal and state law. Part XVIII. D. of the compact specifies the "Fair Employment Practices" of the Tribe. This provision reads:

> The Tribe currently has as set forth in Appendix Q, and agrees to maintain, standards that are comparable to the standards provided in federal laws and State laws forbidding employers from discrimination in connection with the employment of persons working at the Facilities on the basis of race, color, religion, national origin, gender, age, disability/handicap, or marital status. Nothing herein shall preclude the Tribe from giving preference in employment, promotion, seniority, layoffs or retention to members, of the Tribe and other federally recognized tribes.

However, Appendix Q, which consists of the Tribe's employee dispute resolution process does not appear to provide standards related to "discrimination in connection with the employment of persons working at the Facilities on the basis of race, color, religion, national origin, gender, age, disability/handicap, or marital status." If the Tribe maintains standards that are comparable to the standards provided in the federal laws, as stated in the above referenced provision in the compact, the referenced Appendix Q does not appear to evidence such standards. The Tribe's employee dispute procedure outlined in Appendix Q specifically prohibits the employee from being represented by an attorney at the board of review that determines the dispute. It also prohibits the attendance at the proceeding of any person not employed by the tribe, including any outside spokespersons.

**Florida Supreme Court Decision**

The compact was challenged by the Florida House of Representatives and Marco Rubio, individually and in his capacity as Speaker of the Florida House of Representatives, by filing an original proceeding of Quo Warranto 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 Art. II, s. 3, Florida Constitution. The Tribe petitioned the court to be joined as a respondent which the court granted. The Florida Senate filed an Amicus Brief in support of the position of the Florida House of Representatives.

The Florida Supreme Court held 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."[11]

**Validity of the Compact**

Although the proposed compact was approved by the United States Secretary of the Interior and published in the Federal Register, [12] the agreement may still be considered null and void by Florida Supreme Court's decision.[13]

Under the Florida Supreme Court decision, the compact may be invalid because the court held that the Governor lacked the authority to bind the State of Florida to such a compact. As the Florida Supreme Court noted, any approval of the compact by the Secretary of the Interior does not cure the ultra vires (beyond the scope or in excess of legal power or authority) act by the Governor and the validity of the compact is determined by state law not federal law.

The Tenth Circuit Court of Appeals in *Pueblo of Santa Ana v. Kelly*,[14] addressed the issue of whether, under the Indian Gaming Regulatory Act, the Secretary of the Interior can, by his approval, give life to a compact which was void from its inception because the state governor who signed the compact lacked the authority under state law to sign on behalf of the state. The court held that the Secretary's approval could not validate otherwise invalid compacts and upheld the lower court ruling on this issue. The court noted that IGRA imposes two requirements for a compact to authorize Class III gaming – the compact must be validly entered into by the state and the tribe and the compact must be in effect pursuant to the approval of the Secretary of the Interior. The compact will be "in effect" upon approval and subsequent publication of the approval in the Federal Register under the act; however IGRA does not specify how the validity of a compact is to be determined. The court further held that state law, rather than federal law determines whether a state and a tribe have "entered into" a valid compact.

Both the Tenth Circuit Court of Appeals and the Florida Supreme Court noted that the extent a state may enforce its criminal laws on tribal land depends on federal authorization. Congress conferred such jurisdiction on the states in Pub. L. No. 280, 67 Stat. 588, 590 (1953) and Florida assumed the jurisdiction by ch. 61-252, L.O.F., codified at s. 285.16, F.S. The Florida Supreme Court held that "[b]ased on these state and federal provisions, what is legal in Florida is legal on tribal lands, and what is illegal in Florida is illegal there. Absent a compact, any gambling prohibited in the state is prohibited on tribal land." The Governor and the Seminole Tribe of Florida did not enter into a valid compact under Florida law.

**Legal Status of Post-Compact Class III Gaming on Tribal Lands**

Prior to entering into the compact, the Secretary of the Interior indicated to Governor Crist that if the state did not enter into a compact, then the Secretary would authorize Class III slot machine gaming at the Seminole Tribe facilities under "Secretarial Procedures," codified at 25 C.F.R. pt.

[11] *Florida House of Representatives*, 990 So.2d at 1039.
[12] Vol. 73, no.4, *Federal Register*, January 7, 2008.
[13] *See, State v. Johnson*, 120 N.M. 562, 904 P.2d 11 (N.M. 1995).
[14] *Pueblo of Santa Ana v. Kelly*, 104 F. 3d 1546, (10th Cir. 1997), cert. denied, 522 U.S. 807 (1997).

291 (2007).[15] However, as the Florida Supreme Court noted, "[a]t least one federal court has held that the Secretary lacked authority to promulgate such regulations.[16] Therefore, their validity remains questionable."[17]

The Fifth Circuit in *Texas v. United States*[18] held that the Secretary of the Interior could not authorize Class III gaming in violation of federal law. The Secretary would be in direct violation of IGRA and the federal Johnson Act if Class III gaming was authorized without a valid compact. The Johnson Act makes it unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, Indian Country as defined in 18 U.S.C. s. 1151, and maritime and territorial jurisdiction of the United States with certain exceptions. The Indian Gaming Regulatory Act provides an exemption to the Johnson Act prohibitions against gambling devices only if a valid compact is "in effect."

In *Keweenaw Bay Indian Community v. U.S.*, [19] the Sixth Circuit also held that the approval by the Secretary of the Interior of a Tribal-State gaming compact does not eliminate other requirements of IGRA including the requirement for a valid compact and the prohibition of gaming on lands acquired in trust by the Secretary of the Interior for the benefit of an Indian tribe.

**Slot Machines at Licensed Pari-mutuel Facilities**

Class III slot machines are currently being operated at Broward County and Miami-Dade County licensed pari-mutuel facilities pursuant to Amendment 4 to the State Constitution,[20] 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. However, the electors in Miami-Dade approved slot machine gaming at the licensed 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.

[15] *See, Florida House of Representatives,* 990 S.2d at 1040.
[16] *See, Texas v. United States*, 497 F.3d 491, 493 (5th Cir.2007), *petition for cert. filed sub nom. Kickapoo Traditional Tribe of Texas v. Texas*, 76 U.S.L.W. 3471 (U.S. Feb. 25, 2008) (No. 07-1109).
[17] *See, Florida House of Representatives,* 990 S.2d at 1039.
[18] *See,* note 16.
[19] *Keweenaw Bay Indian Community v. U.S.,* 136 F.3d 469 (6th Cir. 1998).
[20] Section 23, Art. X, Florida Constitution.

The facilities that are eligible to conduct slot machine gaming in Miami-Dade County are:

- Flagler Greyhound Track, a greyhound permitholder,
- Calder Racetrack, a thoroughbred permitholder, and
- Miami Jai Alai, a jai alai permitholder.

## III. Effect of Proposed Changes:

**Definitions**

Section 1 of the CS provides definitions for terms. It provides the term "agreement" for the Indian gaming compact that was executed by the Governor and the Tribe and subsequently invalidated by the Florida Supreme Court. It provides the term "compact" for a compact that is executed by the Governor and the Tribe pursuant to the terms of IGRA and this act.

The CS provides a definition of the term "net win" that is based on gross gaming revenue, which is the difference between wins and losses, before deducting costs and expenses.

The CS also provides that the terms "Class I gaming," "Class II gaming," and "Class III gaming," mean the forms of gaming defined in IGRA and the regulations of the Indian Gaming Commission in effect on January 1, 2009.[21]

**Compact of November 2007**

Section 2 of the CS provides that the compact executed by the Governor and the Tribe in November 2007 is not approved or ratified.

**Governor's Authority to Execute a Compact**

Section 3 of the CS grants the Governor the authority to execute an Indian gaming compact on behalf of the state for the purpose of authorizing Class III gaming on its lands.

The CS recognizes the efforts of the Governor and Tribe in the negotiation of the invalidated compact and provides that the compact entered into pursuant to this act can conform to the terms and standards in that previous agreement to the extent that those terms and standards do not conflict with the terms and standards in this act.

Section 3 of the PSC also provides that the Legislature does not need to approve an amendment to the compact if the amendment is consistent with the minimum terms and standards in this act.

The CS also provides that the compact becomes null and void if the covered games, payments, or reductions in payments are held invalid by a court of competent jurisdiction, or the Secretary of Interior.

The CS also requires that the Governor:

[21] *See* 25 C.F.R. Part 502.

- Ensure that revenue sharing is deposited into the Education Enhancement Trust Fund;
- Provide a copy of the executed compact to both houses of the Legislature before or simultaneous to its submission to the Secretary of Interior;
- Preserve all documents related to the intent or interpretation of the compact and keep such records for the term of the compact;

The Governors authority to negotiate the Indian gaming compact expires at the end of the day on December 31, 2009.

**Division of Pari-mutuel Wagering**

The CS designates the Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation as the agency responsible for oversight of the state's responsibilities under an Indian gaming compact.

**Covered Games**

Section 5 of the CS sets forth the types of gaming that the Tribe may conduct under a compact.

Under a compact, the Tribe is authorized to conduct the following types of games that are currently legal in this state under limited conditions at licensed pari-mutuel facilities:

- Slot machines, as defined in s. 551.102(9), F.S.:
- Charity poker games;
- Poker without betting limits if such games are authorized in the rest of the state;
- Any games or devices authorized to the Florida State Lottery (but not through the Internet unless others in the state are also authorized); or
- Any Class II games authorized under state law;

In addition to the games that are currently legal in this state under limited conditions at licensed pari-mutuel facilities, a compact negotiated under the terms of the CS is required to permit the tribe to conduct the following types of games if the licensed pari-mutuel facilities in Miami-Dade and Broward Counties become authorized to offer the play of blackjack:[22]

- Any new Class II game authorized in the state; and
- Banked card games, including baccarat, chemin de fer, and blackjack (21).

The CS also requires that a compact negotiated under the CS to permit the Tribe to conduct:

- Roulette or roulette style games; and
- Craps or craps style games.

[22] The CS for SB 836 by Senator Jones would authorize the pari-mutuel facilities in Miami-Dade and Broward Counties to offer the play of blackjack. These bills are linked. This CS would not take effect if CS 836 does not also become law.

**Revenue Sharing**

The CS requires that the Indian gaming compact provide for revenue sharing through periodic payments to the state during the term of the compact. The CS requires the following revenue sharing:

- $400 million if net win in any cycle is less than or equal to $2 billion;
- $400 million plus 10 percent of net win that is more than $2 billion and less than or equal to $4 billion; and
- $600 million plus 25 percent of net win that is over $4 billion.

This formula provides a $400 million minimum guarantee annual payment. The guaranteed minimum payment under the invalidated compact was $100 million.

The CS provides that revenue sharing may be suspended or reduced if the net win in any cycle fails to reach $1.37 billion. It must resume when the net win for that revenue sharing cycle, plus any subsequent period when revenue sharing is reduced or suspended reaches $1.37 billion.

The CS requires that the compact specify a process for determining any reduction of revenue sharing payments. The process must afford the state with no less than 30 days in which to review the Tribe's projection that the net win for any cycle in which a revenue sharing payment reduction is claimed will or has failed to reach $1.37 billion.

The CS provides that the revenue sharing is in addition to assessments by the state that are necessary to defray its regulatory responsibilities.

If net win falls below $1.37 billion, the CS permits a reduction in revenue sharing, but not the elimination of revenue sharing as provided in the invalidated compact, if additional Class II gaming activities are authorized at licensed pari-mutuel facilities anywhere in the state after the effective date of this act. The Class II games referenced in this provision are in addition to blackjack which may be authorized for licensed pari-mutuel facilities in Miami-Dade and Broward Counties.[23]

The CS would permit the state to retain all the payments that the tribe has been making to the state under the terms of the invalidated compact.[24] The CS specifies that this should be interpreted to validate the agreement or the Tribe's operation of the covered games during the period a valid compact was not in effect.

The CS also provides that revenue sharing shall not be reduced if:

- Historic racing or additional Class II gaming is authorized in this state, including any Class II electronic gaming machines at licensed pari-mutuel facilities; or

[23] *See*, note .
[24] For FY 2007-2008, the state received a total of $60.417 million (A $50 million advance and five payments, from February through June, 2008 at $2.0833 million per month, for $10.417 million).

- By the existence of any gaming activities that are illegal or are of unsettled legal status as long as the state and its local government entities maintain at least their current reasonable level of enforcement actions against such illegal gaming activities.[25]

There is a reduction in revenue sharing payments for additional Class III games in the state. The reduction is to the Tribe's net win on which its revenue sharing is based. The Tribes net win would be reduced by an amount reasonably calculated by the parties to equal the net win from any such additional Class III gaming activities. Such a reduction would not apply to additional Class III gaming west of Gadsden, Liberty, and Franklin Counties.

The CS provides the compact may authorize the Tribe to continue to operate under the terms of a compact if the slot machine amendment in s. 23, Art. X of the State Constitution is repealed.

**Other Provisions**

The CS also:

- Limits the terms of the Indian gaming compact to 25 years;
- Requires that the compact identify and limit the facilities that will offer the authorized games;
- Requires a central computerized reporting and auditing system for the gaming facilities, which must be constructed at the Tribe's expense in coordination between the state's and Tribe's technical personnel;
- Requires state monitoring of the Tribe's gaming facilities, including requiring that the state's inspectors must be allowed access to the public and nonpublic areas of the facilities without notice or with concurrent notice;[26]
- Requires that the compact not limit the number of random inspections;[27]
- Requires annual audits by the state or an independent third-party, including an annual financial audit, to determine compliance with the compact;
- Requires that the state be permitted to inspect, review, and receive copies of the records it deems necessary to verify compliance;
- Prohibits limits on the number of times that the state may inspect covered games or devices;
- Prohibits limits on the number of times the state may review internal controls and violations by the facilities;
- Requires the Tribe to only employ, permit, or authorize medical professionals at its gaming facilities who are licensed by this state;
- Requires that the Tribe allow unimpeded access to the gaming facilities by city or county emergency medical services;
- Requires the Tribe's compliance building code standards to be at least as stringent as the Florida Building Code;

[25] For a discussion the types of gaming activities which may be implicated by this provision, *see Review of Electronic Gaming Exceptions for Adult Arcades and Game Promotions*, Interim Report No. 2009-123, Senate Committee on Regulated Industries, November 2008.
[26] The invalidated compact requires two hours' notice for access by the state's inspectors to the nonpublic areas of the Tribe's gaming facilities.
[27] The invalidated compact limited the number of random inspections to four times annually.

- Requires that the Tribe meet the environmental requirements of any federal permit and the standards established for the state's environmental resource permitting program as provided for in s. 373.414, F.S.;[28]
- Requires written, reasonable procedures for the disposition of tort claims arising from personal injury or property damage alleged to have been suffered by patrons and invitees of its authorized gaming facilities; and
- Requires the Tribe use its best efforts to spend its revenue in this state to acquire goods and services from Florida-based vendors, professionals, and material and service providers.

The CS requires that the Tribe maintain a policy of commercial general liability insurance with a combined single limit for personal injury and property damage of not less than $2 million per occurrence and in the aggregate, adjusted annually to the consumer price index. The Tribe is not permitted to claim sovereign immunity up to the limits in the policy. This provision would provide a waiver of sovereign immunity by the Tribe of at least $2 million dollars.

The CS specifies a process for resolving disputes arising out of the compact through presuit nonbinding arbitration.

Regarding the Tribes employment practices, the CS requires that the Tribe comply with the standards provided in federal laws and state laws forbidding employers from discrimination in connection with employment of persons working at the gaming facilities identified under the compact on the basis of race, color, religion, natural origin, gender, age, disability/handicap, or marital status. It permits the Tribe to give preference in employment, promotion, seniority, layoffs or retention to members of the Tribe and other federally-recognized Tribes.

The Tribe must also provide a process for employee disputes that permits the employee to be represented by an attorney or other legally-authorized representative, and that permits the employee to use language interpreters, including interpreters for the deaf or hard of hearing.

The CS provides the Legislative intent to review the compact every 5 years, in order to consider the authorization of additional Class III games based upon successful implementation of the compact and the history of compliance with the compact.

**Tax Agreements with the Indian Tribes**

The CS authorizes the Governor to execute an agreement on behalf of the State of Florida with the Indian tribes for the purpose of negotiating agreements to develop and implement a fair and workable arrangement regarding the application of state taxes on persons and transactions on Indian Lands. The agreement would explicitly address the imposition of, and exemptions from, state taxes. The CS requires that such an agreement must be approved or ratified by the Legislature. This provision would not expire at the end of the day on December 31, 2009.

[28] Section 373.414, F.S., provides criteria for activities in surface waters and wetlands.

**Effective Date**

This CS would take effect on the same date that section 1 of SB 836, or similar legislation, takes effect if adopted during the 2009 legislative session, or an extension thereof, and becomes law.

## 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:

If an Indian gaming compact is negotiated with the Seminole Tribe of Florida that meets the minimum terms and standards in this CS and IGRA, the Tribe would be able to conduct specified Class III gaming at identified facilities on Indian lands in this state. In consideration for the right to conduct Class III gaming, the CS requires revenue sharing of $400 million if net win in any cycle is less than or equal to $2 billion. It requires revenue sharing of $400 million plus 10 percent of net win for any net win that is more than $2 billion and less than or equal to $4 billion. If net win in any cycle is more than $4 billion, revenue sharing for that cycle would be $600 million plus 25 percent of net win that is over $4 billion. The CS provides that revenue sharing may be reduced, but not eliminated, if the net win in any cycle fails to reach $1.37 billion.

C. Government Sector Impact:

The compact provides for revenue sharing payments of $400 million if net win in any cycle is less than or equal to $2 billion. It requires revenue sharing of $400 million plus 10 percent of net win for any net win that is more than $2 billion and less than or equal to $4 billion. If net win in any cycle is more than $4 billion, revenue sharing for that cycle would be $600 million plus 25 percent of net win that is over $4 billion. The CS provides that revenue sharing may be reduced, but not eliminated, if the net win in any cycle fails to reach $1.37 billion. The estimated amount of payments to the state is indeterminate.

The CS requires that the Tribe is responsible for the state's regulatory costs under the compact.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

This CS is linked to CS/SB 836 by the Regulated Industries Committee and Senator Jones. This CS would take effect on the same date that section 1 of SB 836, or similar legislation, takes effect if adopted during the 2009 legislative session, or an extension thereof, and becomes law.

The CS authorizes a compact that permits additional Class III games for the Tribe if pari-mutuel facilities in Miami-Dade and Broward Counties are authorized to offer the play of blackjack. CS/SB 836 by the Regulated Industries Committee and Senator Jones would authorize the pari-mutuel facilities in Miami-Dade and Broward Counties to offer the play of blackjack.

## VIII. Additional Information:

### A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries on March 25, 2009:**
The committee substitute replaces the legislative intent to revise the laws relating to tribal state-state gaming compacts with specific requirements for a valid compact, authorizes the governor to negotiate agreements with the Indian tribes relating to taxes, and provides an effective date. (Refer to Effect of Proposed Changes section of this analysis.)

The CS differs from the proposed committee substitute by clarifying how the revenue sharing is computed. It also authorizes a compact that permits the Tribe to conduct banked card games, including baccarat, chemin de fer, and blackjack (21) if the licensed pari-mutuel facilities in Miami-Dade and Broward Counties become authorized to offer the play of blackjack. The bill permits the Tribe to conduct roulette and craps.

### B. Amendments:

None.