

SENATE BILL REPORT

SSB 5905

As Passed Senate, March 13, 2001

Title: An act relating to the negotiation, enforcement, and resolution of disputes regarding tribal/state gaming compacts under the federal Indian gaming regulatory act of 1988.

Brief Description: Concerning the negotiation, enforcement, and resolution of disputes regarding tribal/state gaming compacts under the federal Indian gaming regulatory act of 1988.

Sponsors: Senate Committee on Labor, Commerce & Financial Institutions (originally sponsored by Senators Prentice, Swecker and Winsley).

Brief History:

Committee Activity: Labor, Commerce & Financial Institutions: 2/22/01, 2/27/01 [DPS, DNP].

Passed Senate: 3/13/01, 29-20.

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: That Substitute Senate Bill No. 5905 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Gardner, Vice Chair; Fairley, Franklin, Patterson, Rasmussen, Regala and Winsley.

Minority Report: Do not pass.

Signed by Senators Benton, Hochstatter and Honeyford.

Staff: Catherine Mele (786-7470)

Background: In 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA). The IGRA provides a comprehensive scheme governing gambling on Indian lands. Under IGRA, tribes may not conduct class III gambling on Indian land unless the state and the tribe have a compact governing the specific form of gambling. Class III gaming typically includes banking card games, slot machines, pari-mutuel racing, lotteries, and electronic games of chance such as video poker. A tribe that wants to conduct class III gaming must request that the state negotiate a compact. The state regulates class III gaming under the terms of the tribal-state gaming compact agreement.

IGRA requires that the state negotiate with the tribes in good faith.— If the state refuses to negotiate or the tribe alleges the state is not negotiating in good faith,— IGRA authorizes the tribe to sue the state in federal court. In 1996, the United States Supreme Court ruled that this provision authorizing tribes to sue a state for failure to negotiate in good faith violates the state's sovereign immunity under the 11th Amendment of the U.S. Constitution. If a state chooses to assert its sovereign immunity defense, this portion of IGRA is rendered inoperable.

In Washington, 24 tribal-state compacts have been approved. Fourteen compacting tribes operate casino facilities. Three tribes operate casino facilities without tribal-state compact agreements.

Summary of Bill: The state consents to the jurisdiction of the federal courts in any action brought by the tribes to settle disputes arising under the Indian Gaming Regulatory Act or tribal-state compacts. This limited waiver of sovereign immunity is conditioned upon the tribe having a tribal-state gaming compact, and upon a similar waiver of sovereign immunity by the tribe bringing the action.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The Gambling Commission supports this bill. There are three tribes in Washington that are not compacted. This bill will help with the dispute resolution process. The state and the tribes have worked together to waive immunity during the friendly lawsuit where we both agreed to submit to the decision of the federal court. We believe in the cooperative process and this bill facilitates that goal. This is an attempt to try to keep compact negotiations moving toward resolution. This bill will foster a more trusting and equitable relationship between the governments. We have worked with the Gambling Commission for years in developing compacts; only in rare cases do we seek court action. The Attorney General will always be involved in a dispute resolution with the tribes; thus, the timing will never be the right time. We strongly support equal partnership with the state of Washington. The waiver would demonstrate the commitment that Washington has to the tribes. Other states have waived sovereign immunity. We want a fair relationship. As with any other contractual relationship we want our contracts to be enforceable in court. It is good public policy.

Concerns: The Office of the Attorney General has concerns about this bill. This bill may interfere with current tribal-state compacts. Federal rules provide an alternative track for the state and the tribe to reach a compact agreement. We are in the process of using these rules to reach a compact. This bill may change this process because of timing. It is important to let the process continue without changing the ground rules. Perhaps next session is a better time for this bill. If we waive sovereign immunity for lawsuits, we may waive any objections we could make at the end of the current mediation process.

Testimony Against: None.

Testified: Joe Beck, WA Indian Gaming Assn. (pro); Ed Fleisher, Gambling Commission (pro); David Walsh, Attorney General (concerns); Dawn Vyvyan, Jamestown, S'Klallam, Yakama Nation (pro); Brian Cladoosby, Swinomish Tribe (pro); Mike Moran, Kent Caputo, Muckleshoot Indian Tribe (pro).

House Amendment(s): The amended bill provides an expiration date (July 30, 2007) for the state's consent to federal court jurisdiction over disputes arising under the Indian Gaming Regulatory Act or under a state/tribal compact. Additional language clarifies that the state's

limited waiver of sovereign immunity extends only to suits properly filed before the expiration date.