

# SENATE BILL REPORT

## SB 6301

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As Reported By Senate Committee On:  
Labor, Commerce, Research & Development, February 2, 2006

**Title:** An act relating to compacts negotiated under the Indian Gaming Regulatory Act of 1988.

**Brief Description:** Concerning off-reservation tribal gaming.

**Sponsors:** Senators Prentice, Deccio, Fairley, Delvin, Kohl-Welles, Kline, Rockefeller, Keiser, McAuliffe, Rasmussen, Franklin, Zarelli, Thibaudeau, Parlette, Spanel, Honeyford, Regala, Carrell, Oke and Shin.

**Brief History:**

**Committee Activity:** Labor, Commerce, Research & Development: 1/26/06, 2/2/06 [DPS].

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### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 6301 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Parlette, Ranking Minority Member; Hewitt, Honeyford, Keiser and Prentice.

**Staff:** John Dziedzic (786-7784)

**Background:** Congress enacted the Indian Gaming Regulatory Act (IGRA) in 1988 in response to the United States Supreme Court case *California v. Cabazon Band of Mission Indians*. The IGRA is a comprehensive scheme governing gambling on Indian lands. The IGRA divides gambling into three classes and provides a different regulatory scheme for each class:

- 1) Class I gaming consists of "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of or in connection with tribal ceremonies or celebrations." Class I gaming is under the jurisdiction of the tribe and is not subject to IGRA.
- 2) Class II gaming includes bingo, and, if played at the same location as bingo, "pull-tabs, lotto, punchboards, tip jars, instant bingo and other games similar to bingo," provided that the state authorizes such gaming by anyone for any purpose anywhere in the state. Class II gaming is under the jurisdiction of the tribe with oversight by the National Indian Gaming Commission.
- 3) Class III gaming is defined by the act as "all forms of gaming that are not Class I gaming or Class II gaming." Typically, Class III gaming includes banked card games, slot machines, pari-mutuel racing, lotteries, and electronic games of chance such as video poker. Class III gaming is co-regulated by the Tribe and the State, with oversight by the National Indian Gaming Commission.

Under IGRA, the various classes of tribal gaming are permitted on "Indian lands" (subject to entering into a compact with the state for Class III gaming). "Indian lands" are defined as: (1) all lands within the limits of an Indian reservation; and (2) lands held in trust by the federal government for the benefit of a tribe or an individual or held by a tribe or individual subject to federal restrictions against alienation and over which a tribe exercises governmental power.

Generally, lands acquired and placed in trust for a tribe after 1988 may not be used for tribal gaming, unless the lands are: (1) located within or contiguous to the reservation as it existed in 1988; or (2) taken into trust as part of a land claim settlement, an initial reservation under the federal tribe acknowledgment process, or the restoration of lands when federal recognition is restored.

The IGRA prohibition against locating tribal gaming facilities on newly acquired trust lands does not apply if the Secretary of the Interior determines that gaming on newly acquired lands would be in the best interest of the tribe and would not be detrimental to the surrounding community. In making this determination, the Secretary must consult with the tribe, appropriate state and local officials, and other nearby tribes, and the state's governor must concur in the Secretary's decision.

Before 1992, the Gambling Commission negotiated, and the Governor approved, all tribal-state compacts on behalf of the state. The Legislature did not play a role in the negotiations. However, a 1992 Attorney General's opinion indicated the Governor did not have authority to execute these compacts on behalf of the state without express authorization from the Legislature. As a result, legislation was enacted granting the Governor authority to execute, on behalf of the state, class III gaming compact agreements with federally recognized Indian tribes, and further clarified the negotiation process.

Under RCW 9.46.360, compact negotiations involve the Director of the Gambling Commission negotiates compact agreements and amendments on behalf of the state. The Director then forwards proposed compacts and compact amendments to the Gambling Commission and the designated standing committees of the Legislature. The designated standing committees hold a hearing on the compact and compact amendments and may forward comments to the Commission. The Commission also may hold hearings. The Commission, including the four ex-officio legislative members, must vote on the proposed compact or compact amendments within 45 days after receiving the proposed compact or amendment. The Commission may seek further negotiation or may forward the agreement or amendments to the Governor. The Governor conducts a review and has authority to execute the compact or compact amendments.

**Summary of Substitute Bill:** A 60 percent affirmative vote of both houses of the legislature is required before the Governor is authorized to concur with the Secretary of the Interior's determination that off-reservation lands acquired into trust for a tribe after the 1988 adoption date of IGRA may be approved for Class III gambling activities.

**Substitute Bill Compared to Original Bill:** The original bill required a 60 percent vote of the Legislature before the Governor could execute a compact authorizing Class III gambling activities on off-reservation lands acquired into trust for a tribe after the adopted date of IGRA. The bill also directed the legislative committees that conduct public hearings on proposed compacts to make a recommendation to adopt or reject the proposed compact.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** One of the controversies raised by a recent compact proposal was a provision authorizing a Class III tribal gambling facility located outside an established reservation on trust lands that had been acquired into trust status after the adoption of IGRA. The citizens of this state have consistently and repeatedly opposed expansions of gambling into new areas, for example the resounding defeat of I-892, an initiative to allow electronic gambling devices. If any of the many issues addressed in tribal-state compacts under IGRA should demand the attention of the Legislature, the location of Vegas-style gambling should be the one, because of its significant, potentially state-wide impact.

**Testimony Against:** None.

**Testimony Other:** If the Legislature is going to become involved in the tribal-state compact negotiating process, it should become a full participant on all issues, and should not parse out just one.

This bill was discussed at the Gambling Commission's regular January meeting. The commission is neutral, but noted that the bill could potentially raise federal preemption and other legal issues that need to be carefully examined.

The one time in state history where the Governor concurred in the Secretary of Interior's approval of Class III gambling on off-reservation trust lands, it was because the unique physical characteristics of the tribe's reservation (in flood plain, no potable water) rendered the reservation effectively unbuildable. There are proposals in the works at the federal level to amend IGRA to establish greater nation-wide consistency on this issue.

**Who Testified:** PRO: Senator Prentice, Prime Sponsor; Norm Maleng, King County Prosecutor.

OTHER: Steve Lindstrom, Michels Development; Amy Hunter, Gambling Commission, Kent Caputo, Randy Scott.