



SENATE BILL 582 (PCS): Authorize Indian Gaming/Revenue.

2011-2012 General Assembly

Committee:	Rules and Operations of the Senate	Date:	May 15, 2012
Introduced by:	Sen. Apodaca	Prepared by:	Hal Pell
Analysis of:	PCS to First Edition S582-CSRU-18		Staff Attorney

SUMMARY: *The proposed committee substitute makes specified Class III gaming activities lawful if conducted on Indian lands pursuant to a Tribal-State Compact; establishes an Indian Gaming Education Revenue Fund, with funds appropriated to the State Public School Fund as received from revenue paid pursuant to a Tribal-State Compact; and provides that funds are to be allotted quarterly to local school administrative units, charter schools, and regional schools on the basis of average daily membership.*

CURRENT LAW:

The federal Indian Gaming Regulatory Act (IGRA) allows federally-recognized Indian tribes to conduct certain gaming activities only in conformance with a valid compact between the tribe and the State in which the gaming activities are located. The IGRA divides gaming into three Classes, with Class III gaming being those games that are typically deemed "casino style" games, but also includes electronic facsimiles of any game of chance. (see Attachment for description of gaming classes).

Under federal and State law, a Class III gaming activity may only be conducted if it (1) is located in a state that permits such gaming for any purpose by any person, organization, or entity [has been made lawful], and (2) is conducted pursuant to a Tribal State compact. The federal courts have held that a state law authorizing gaming only by Indian tribes on Indian lands complies with the IGRA, and does not violate the Equal Protection Clause of the United States Constitution.

BACKGROUND:

In 1994, Governor Hunt entered into a Tribal-State Compact with the Eastern Band of Cherokee Indians (Tribe). The Compact has been amended, with the last amendments signed in 2000, again by Governor Hunt. The Compact provided that the Tribe may conduct raffles and video games. "Video Games" was defined as

any electronic video game or amusement device that allows a player to play a game of amusement involving the use of skill or dexterity as allowed under NCGS 14-306(b) and 14-306.1, or as subsequently amended by the North Carolina General Assembly.

The 2000 Compact was for a term of 30 years, and had no revenue sharing provision, i.e., no percentage of revenue received by the Tribe from video gaming went to the State. When the General Assembly made video gaming unlawful in 2006, it excepted video gaming conducted by a federally-recognized Indian Tribe on Indian lands, pursuant to a lawful Tribal-State Compact.

On November 28, 2011, Governor Perdue entered into a "First Amended & Restated Tribal State Compact" with the Eastern Band of Cherokee Indians. In addition to raffles and video games, the Compact would authorize the Tribe to conduct "all Class III gaming activities as defined by the Act that are customary in other gaming jurisdictions in the United States as of the Execution Date, including, without limitation, Live Table Gaming on Eastern Cherokee Lands."

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Because North Carolina law only authorizes the Governor to enter into Compacts that "are consistent with State law," the 2011 Compact includes a requirement, in order for the Compact to become effective, that there is "passage of authorizing legislation by the North Carolina General Assembly." Absent legislation by the General Assembly which makes the proposed Class III gaming activities lawful for the Tribe, any Compact "authorizing" such activities cannot be deemed lawful and will not be approved by the Secretary of the Interior—which is necessary for the conduct of Class III gaming on Indian lands.

BILL ANALYSIS:

Section 1

- Establishes a non-reverting "Indian Gaming Education Revenue Fund" (IGERF) in the State Treasury. Funds shall only be expended from the Fund by specific appropriation.
- Funds received by the IGERF are deemed appropriated as received to the State Public School Fund for quarterly allotment by the State Board of Education to: local school administrative units; charter schools; and regional schools.
- Funds received by local school administrative units are directed to be spent for classroom teachers; teacher assistants; classroom materials or supplies, or textbooks.

Section 2

- Provides that a described list of Class III games may be legally conducted on Indian lands if: the gaming is pursuant to a valid Tribal-State Compact that has been approved by the U.S. Department of the Interior, and the Compact requires that all monies paid by the tribe [revenue sharing] are to be paid to the IGERF.
- The act would authorize the following Class III games:
 - (1) Gaming Machines. A Gaming Machine is defined as one that meets the definition of the "slot machine" under State law; or a "gaming machine" or "gambling device" under federal law. (see Attachment for the federal definitions)
 - (2) Live table games. Live table games are defined as games that utilize non-electric cards, dice, chips or equipment in the play and operation of the games. In that the definition of "gambling device" at 15 U.S.C. 1171(a)(2)(Attachment) may include non-electric equipment, it is unclear how such games would be categorized (*i.e.*, are they "gaming devices" or "live table games").
 - (3) Raffles, as defined by State law.
 - (4) Video games, as defined by State law. The referenced statutes define "video games" as ones that allow a player to play a game of amusement involving the use of skill or dexterity, or those that are not dependent on the skill or dexterity of the player. The current Compact only authorizes "video games" to be conducted on Indian lands that allow a player to play a game of amusement involving the use of skill or dexterity.

Section 3 -- Repeals the current law that exempts video gaming, if conducted pursuant to a valid Tribal-State Compact, from State statutes which makes operating or possessing certain video games unlawful.

EFFECTIVE DATE: The act would be effective when it becomes law.

ATTACHMENT

IGRA Classifications of Tribal Gaming

Class I: Social gaming, such as traditional Indian games played as part of tribal ceremonies and celebrations. Tribes have exclusive authority to regulate Class I gaming.

Class II: Bingo, pull-tabs and other similar games, including non-banking card games not prohibited by state law. Expressly excluded from Class II gaming are banking card games, such as blackjack, or slot machines of any kind. Tribes have authority to regulate Class II gaming under the jurisdiction of the National Indian Gaming Commission. Self-regulatory ordinances adopted by tribal governments must be approved by the Commission.

Class III: All forms of gaming that are not included under Class I or Class II, such as blackjack and slot machines. Class III games are legal on tribal lands only if the games are authorized by the governing body of the tribe; the games are located in a state that permits gaming for any purpose by any person, organization or entity; and the games are conducted in conformance with a tribal-state compact entered into by the tribe and the state in which the gaming is conducted. Class III gaming compacts negotiated under the IGRA include stringent provisions ranging from application of criminal and civil laws regarding licensing and regulation of gaming, to standards for the operation of gaming activities, and financial assessments by the state to defray the costs of background investigations or other expenses associated with enforcement of the compacts.

<http://www.indiangaming.com/industry/>

Gaming Machine, 25 C.F.R. §542.2

Gaming machine means an electronic or electromechanical machine that allows a player to play games of chance, some of which may be affected by skill, which contains a microprocessor with random number generator capability for outcome selection or computer terminal that accesses an outcome that is subsequently and randomly selected in drawings that are electronically conducted by central computer or other such methods of chance selection, whether mechanical or electronic. The machine is activated by the insertion of cash or cash equivalents and which awards cash, cash equivalents, merchandise, or a written statement of the player's accumulated credits, which written statements may be redeemable for cash.

Gambling Device, 15 U.S.C. §1171

(a) The term “gambling device” means—

(1) any so-called “slot machine” or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and

(A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or

(B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and

(A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or

(B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.