

THE FLORIDA SENATE
SENATOR JEFF ATWATER
President

September 15, 2009

The Honorable Charlie Crist
Governor of Florida
The Capitol
Tallahassee, FL 32399

Dear Governor:

I am attaching the letter our Staff Director for Regulated Industries sent to your General Counsel, Mr. Wheeler, which delineates a series of questions raised by the proposed Gaming Compact with the Seminole Tribe of Florida.

As you might imagine, questions from staff are largely technical in nature, and beg the continuing concerns Senators may have regarding the philosophical deviations of this proposed compact from Chapter 2009-170, L.O.F. Therefore, please do not assume that failure to raise a question at this juncture signals acquiescence with all the other terms and conditions reflected in the proposed compact. Before we can begin to engage a much broader conversation on those questions that might remain, it is important that we fully understand the technical underpinnings and ramifications of the proposed compact language.

Once again, thank you for your continued leadership on this issue. I am optimistic that given the good faith all parties have displayed to date, and our commitment to continue to operate in good faith, that we can create a product that benefits all Floridians.

Sincerely,



Jeff Atwater
President

Attachment

September 15, 2009
Page 2



THE FLORIDA SENATE
COMMITTEE ON REGULATED INDUSTRIES

Location
330 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5957

Senator Dennis L. Jones, D.C., *Chair*
Senator Ted Deutch, *Vice Chair*

Professional Staff: James Parker Rhea, *Staff Director*

Senate's Website: www.flsenate.gov

September 15, 2009

Robert R. Wheeler, General Counsel
Office of the Governor
The Capitol
400 South Monroe Street, Room 209
Tallahassee, Florida 32399-6536

Re: August 31, 2009 Seminole Compact

Dear Mr. Wheeler:

As noted in the letter from President Atwater to Governor Crist dated September 10, 2009, the Senate is in receipt of the proposed compact signed on August 31, 2009, by Governor Crist and Chairman Mitchell Cypress. Legislative staff has conducted an initial review of the document and, in an effort to understand the terms of the proposed compact and how it comports with the provisions of Chapter 2009-170, L.O.F., has developed a number of questions regarding the proposed compact. These questions are designed to help us understand the rationale for the exclusivity and revenue sharing provisions, how these provisions interrelate, and the thought process from which they were derived. To the extent the answers to some of these questions are not explicitly contained within the four corners of the document, answers reflecting the agreement and understanding between the Tribe and the Governor would be useful to the Legislature in formulating its response. As we continue to work together in good faith, and in a timely manner, to resolve this matter for the benefit of all Floridians, we request a written response to these questions by October 9, 2009.

1. The exclusivity provision in Part XII.A. (Page 34) refers to "other casino-style gaming," "video lottery terminals (VLTs)" and "electronically-assisted bingo" but these terms are undefined.
 - (a) Please provide the definition for each term that would be applicable.
 - (b) Please identify whether each such game is Class II or Class III under IGRA.
 - (c) Please identify the basis for supporting this definition.
 - (d) Please identify whether this definition would be the generally accepted definition of the game that the courts would use in interpreting the compact.

2. Part III.F.3. (Page 4) includes “raffles and drawings” within the definition of “covered games.”
 - (a) Please explain the basis for including this provision within the definition of “covered games.”
 - (b) Please explain what games fall within the meaning of those terms.
 - (c) Please explain whether this provision permits the Tribe to offer a lottery or lottery-style games.

3. “Net Win” is defined to be the total receipts from the play of all covered games, which does not include free play or promotional credits, less all prize payouts (Page 8).
 - (a) There are two possible interpretations for this term: (1) Net win = (Total receipts-free play) – prize payouts; or (2) Net win = Total receipts – (free play – prize payouts). We anticipate the correct interpretation is (1). Please confirm if this correct.
 - (b) The payment schedule (Page 28) refers to “. . . Net Win received by the Tribe” Does this provision permit the Tribe to exclude from Net Win any moneys, such as, costs for leasing slot machines?

4. The exclusivity provision in Part XII.A. (Page 34) provides that “[i]f, after September 1, 2009, Florida law is amended or interpreted to allow any expansion of Class III gaming or other casino-style gaming...or any similar games...that allow direct operation of the games by customers of the Florida Lottery...payments due the State...shall cease....”
 - (a) This provision appears to be missing a parenthesis, which can lead to several different meanings of the provision depending upon which clauses are within the parenthetical. Please advise where the missing parenthesis should be placed.
 - (b) Is the exclusivity provision in Part XII.A. of the compact intended to be limited solely to the expansion in the number or types of games operated by customers of the Florida Lottery. If so, how?
 - (c) If not, please advise what the clause “. . . that allow direct operation of the games by customers of the Florida Lottery” is intended to modify in Part XII.A. and the impact of that clause.
 - (d) Is poker considered to be an “other casino-style” game? If so, would changes to Florida law relating to poker trigger a reduction or cessation of payments?

5. The exclusivity provision in Part XII.A. (Page 34) provides that payments due the State shall cease if Florida law is “. . . interpreted to allow any expansion” of gaming. Additionally, Part XII.B.4. (Pages 36-37), provides that payments due the State shall be calculated by excluding Net Win from the Tribe’s facilities in Broward County if Florida law is “interpreted” to allow certain games in Miami-Dade or Broward Counties.
 - (a) Please explain whether an interpretation within the meaning of these provisions is limited to judicial interpretations, or whether the term includes other non-judicial interpretations, such as, a declaratory statement by a state agency, an Attorney

- General Opinion, or an opinion of a member or representative of the Seminole Tribe with the authority to make such an interpretation on the behalf of the Tribe.
- (b) Please advise whether such interpretation must be in writing.
 - (c) Is the application of either of these provisions stayed if the interpretation occurs in a forum that is subject to judicial or administrative review?
 - (d) If the application is stayed, please identify the basis for such a stay under the compact.
 - (e) Is the reduction or cessation of payments effective when the law is interpreted or when such games are offered in fact?
6. The exception to exclusivity in Part XII.B.1. (Page 35) permits continuation of payments to the State if the State enters into a compact with any other federally recognized tribe pursuant to IGRA “. . . provided the tribe has land in federal trust in the State as of January 1, 2009.”
- (a) What was the purpose for adding the clause “. . . provided the tribe has land in federal trust in the State as of January 1, 2009” to this exception?
 - (b) If the State is required to conduct good faith negotiations under IGRA with a federally-recognized tribe that obtains lands in federal trust after January 1, 2009, and enters into a compact for class III gaming with that tribe, would all payments to the State by the Seminole Tribe cease?
7. The exception to exclusivity in Part XII.B.2. (Page 35) authorizes slot machines at the seven (7) presently licensed pari-mutuel facilities in Broward and Miami-Dade Counties and at the existing facility in Hialeah Park, provided that “. . . such licenses are not transferred or otherwise used to move or operate such slot machines at any location not presently authorized.” Under this provision, it is unclear what happens if slot machines are transferred from one of the seven existing pari-mutuels facilities to another location.
- (a) Does such transfer trigger an elimination of payments pursuant to Part XII.A, a payment reduction for the Broward Tribal facilities under the exception in Part XII.B.3., or does it trigger a payment cessation for the Broward Tribal facilities under the exception in Part XII.B.4.?
 - (b) Who exercises the discretion to determine which provision applies and how does that person exercise that discretion?
 - (c) What specific provisions in the proposed compact and other factors are applicable to the determination of which exception applies?
8. The exception to exclusivity in Part XII.B.3. (Pages 35 and 36) triggers a payment reduction for Broward Tribal facilities if the Florida Constitution or statutes are amended to allow the play of “. . . any additional type of game (such as blackjack). . . .”
- (a) Is the example of “blackjack” intended to limit the application of this provision to Class III games?
 - (b) Would bingo, electronic bingo machines, or other Class II games fall with the parameters of this provision?

- (c) Would games of skill fall under the parameters of this provision?
 - (d) Please provide specific examples of games that would be considered to fall within the parameters of this provision.
9. The exception to exclusivity in Part XII.B.3. (Pages 35 and 36) triggers a payment reduction for the Broward Tribal facilities if the Florida Constitution or statutes are amended to allow the play of “. . . any additional type of game” and the “. . . Tribe’s annual Net Win from its Facilities located in Broward County for the 12 month period after the expansion is less than the Net Win for the 12 month period preceding the commencement of such expansion, or if the commencement of such new authorization is made during the Initial Period, the last 12 months under the 2007 Compact. . . herein after referred to as the ‘Net Revenue Base’”
- (a) Is “commencement” the effective date of the authorization of such games or the date on which such games are offered in fact?
 - (b) The term “Net Revenue Base” is defined in Part XII.B.3.(b). Please explain whether the term applies to the last 12 months under the 2007 compact, or the 12 month period preceding the commencement of game expansion, or to some other 12 month period.
 - (c) Regarding a second or subsequent reduction of the Tribe’s net win, is it contemplated that the Tribe must show a causal connection between the introduction of an “additional type of game” and the Tribe’s reduction in Net Win which may occur a decade or more after the initial Net Revenue Base period?
 - (d) Does the clause “may be reduced again under the provisions set forth above” mean that any second or subsequent reduction of the Net Win will be calculated by relating back to the Net Win for the 12 month period before the introduction of the game?
 - (e) Is the State authorized under the compact to contest a reduction in Net Win or payments based upon other intervening factors, such as, a downturn in the economy?
10. The exception to exclusivity in Part XII.B.4. (Pages 36-37) excludes Hialeah Park from those “locations” in Miami-Dade and Broward Counties that may not be authorized additional Class III gaming and “other casino-style gaming” without triggering the exclusion of net win from the Tribe’s facilities in Broward County.
- (a) Are the “locations” contemplated by this provision intended to include only pari-mutuel facilities in Miami-Dade and Broward Counties?
 - (b) Is the intent of this provision that Hialeah Park would be the only pari-mutuel facility in Broward and Miami-Dade Counties that could offer the play of any Class III games, including banked card games, without affecting payments to the state?
 - (c) Is the intent of this provision that Hialeah Park would be the only facility in Broward and Miami-Dade Counties that could offer the play of “other casino-style” games without affecting payments to the state?
 - (d) Is “casino-style gaming” under Part XII.B.4. intended to include Class II electronic bingo games?

- (e) If any Broward or Miami-Dade pari-mutuel facilities are authorized to offer additional Class III games or other casino-style games, would such authorization trigger the provisions in either Part XII.B.3. or in Part XII.B.4.?
 - (f) Does the phrase “and such games were not in play as of January 1, 2009” apply to the types of game or to the number of games existing prior to that date (i.e., the number of poker tables or slot machines at a specific pari-mutuel facility)?
 - (g) Does the phrase “public or private use” limit the number or types of games the Florida Lottery may offer?
 - (h) Would the offering of slot machines by a Broward or Miami-Dade pari-mutuel facility that is qualified under existing law to offer slot machines but has not done so as of January 1, 2009, trigger an elimination in payments pursuant to Part XII.A. or a reduction in payments pursuant to Part XII.B.3. or Part XII.B.4. or would the offering of slot machines by such an entity have no effect under XII.B.2.?
11. The exception to exclusivity in Part XII.B.4 (Pages 36 and 37) does not state what occurs if Class III gaming or “other casino-style gaming” is no longer offered.
- (a) Do payments resume if the “Class III gaming or casino-style gaming” is no longer offered?
 - (b) If such payments are intended to resume when Class III gaming or casino-style gaming is no longer offered, do payments resume upon those games not being offered? If so, what provision of the compact would be relied upon for resumption of payments?
12. The exception to exclusivity in Part XII.B.5. (Page 37) permits the operation of a combined total of not more than 300 Historic Racing Machines and Electronic Bingo Machines at each pari-mutuel facility licensed as of April 1, 2009, and not located in either Broward or Miami-Dade Counties.
- (a) Please explain whether the phrase “a combined total of not more than 300 Historic Racing Machines and Electronic Bingo Machines at each pari-mutuel facility” limits the number of machines at an individual facility to 300 of each type of machine (e.g., 300 Historic Racing Machines and 300 Electronic Bingo Machines), or 300 total of both types at each facility (e.g., 250 of one type and 50 of another type), or 300 of both types of machines divided among all facilities.
 - (b) If any Broward or Miami-Dade pari-mutuels offered the Historic Racing Machines or Electronic Bingo defined in the proposed compact, would that event trigger an elimination in payments pursuant to Part XII.A. or a reduction in payments pursuant to Part XII.B.3. or Part XII.B.4.?
 - (c) Please explain the basis for determining which is the applicable provision if Historic Racing Machines or Electronic Bingo were offered.
 - (d) Explain whether the State or the Tribe would decide which provision would be triggered.

- (e) Please clarify the meaning and intent of the second and third sentences of Part XII.B.5.
13. Part XI.B.2 and Part XII.A. and B. specify instances in which revenue sharing payments are reduced or cease in their entirety. Could revenue sharing payments be affected by any other action by the State that is inconsistent with terms of the proposed compact and, if so affected, how?
14. Part XI.B.1. (Pages 27-33) provides two tiers for the Percentage Revenue Share Amounts, one for the three Broward facilities and another for the four tribal facilities outside Broward.
- (a) What are the financial justifications for bifurcating the revenue sharing percentage schedules between the three Broward facilities and the four outside Broward County?
- (b) Please provide any financial data relied upon in constructing the separate calculation.
15. Part XI.D. (Page 34) provides for annual payments to the Florida Council on Compulsive Gaming as an “assignee of the state” and “as a further payment for substantial exclusivity” in an amount not less than Two-Hundred Fifty Thousand Dollars.
- (a) Are these payments intended to be calculated as separate from, and in addition to, the revenue sharing payments in Part XI.B. or are these payments intended to be deducted from the revenue sharing payments in Part XI.B?
- (b) If the reduction or cessation of payment provisions in Part XII.A., Part XII.B.3.(b), or Part XII.B.4. are triggered (Pages 35, 36, and 37), are the annual payments to the Florida Council on Compulsive Gaming in Part XI.D. affected in any manner? If so, how is a reduction determined?
16. Part XI.B.2. (Page 33) provides that if federal or state law is amended to permit internet/on-line gaming and the Tribe’s Net Win from the operation of covered Games at all of its Facilities combined drops more than five percent below its Net Win from the previous 12 months (“Revenue Level A”), the Tribe would no longer be required to make payments based on the Guaranteed Minimum Payment but would make payments based on the Percentage Revenue Share Amount. The Tribe would resume making the Guaranteed Minimum Payment if its Net Win rises above Revenue Level A.
- (a) If such internet gaming is authorized during the Initial Period, how would the Tribe’s payments be affected?
- (b) “Net Win” is referred to three times in Part XI.B.2. but only once with a reference to a time period. What is the time period used to calculate Net Win for the other two times “Net Win” is referenced in this section?
- (c) Does the reference to the “previous 12 months” in Part XI.B.2. refer to any 12-month period before any applicable change in federal or state law or does it refer to the 12 months immediately before a change in federal or state law?
- (d) Assuming that the measurement period for the reduction in Net Win is twelve months, is this period the twelve months immediately following a change in state or

federal law or is it any 12-month period after the change in state or federal law takes effect?

- (e) If the federal government authorized limited on-line gaming and the Tribe's net win was not affected during the first 5 years after the effective date of the federal law, a recession occurred thereafter, and the Tribe's net win dropped by more than 5 percent, would the decrease in shared revenue last until the recession ended?
- (f) If this provision is triggered and Net win rises above Revenue Level A, will only the Guaranteed Minimum Payment be made or will the payment be based upon the greater of the Percentage Revenue Share Amount or the Guaranteed Minimum Payment?

17. During the Initial Period (the first 30 months) the Tribe agrees to pay the State a Revenue Share Payment of \$12.5 million per month (Page 28). If gaming that would trigger the provisions of XII.B.3. or XII.B.4. is authorized in Broward and Miami-Dade Counties during the Initial Period, will the Revenue Share Payment be affected by the reduction or cessation of payments in Broward and, if so, how will the Revenue Share be affected?

18. The proposed compact designates the Florida Department of Revenue as the "State Compliance Agency."

- (a) Please provide the reasons for this designation and explain why the Division of Pari-mutuel Wagering was not designated as the "State Compliance Agency" as provided in ch.2009-170, L.O.F.
- (b) Does the proposed compact prohibit the Division of Pari-mutuel Wagering or other agency from having a role in oversight? Specifically, could the Department of Revenue cooperate, consult or contract with another agency to effectuate its oversight responsibilities?

19. Part XI.A. (Page 27) requires the Tribe to convert eighty percent of its Class II video bingo terminals to Class III slot machines within 48 months of January 1, 2008, and all of its Class II video bingo terminals to Class III slot machines within 60 months of January 1, 2008. If all the Class II video bingo terminals are not converted to Class III slot machines by the required dates, the payment to the State includes an additional revenue share on the operation of Covered Games to be calculated as if the conversion has been completed.

- (a) Is there any penalty if the conversion required within 48 months of January 1, 2008, is not completed as required?
- (b) What is the meaning of the term "additional revenue share" that occurs if the total conversion required within 60 months of January 1, 2008, is not completed as required?
- (c) Is this additional revenue share in addition to the Guaranteed Minimum Payment if that payment was otherwise in place?
- (d) In calculating the additional revenue share, what percentage should be applied in order to determine the additional revenue share?

- (e) How is the additional revenue share calculated if the conversion has not been completed?
 - i. Is the revenue from the machines that have not been converted included in the calculation of Net Win or is the revenue based on a projection of the revenue that these machines would have generated if they had been converted to Class III machines?
 - ii. If the calculation is made on a projection of revenue, who makes the calculation?
20. Part XI.B.1.(c)(i) (Page 31) requires that on or before the fifteenth day of the month following each month of a Revenue Sharing Cycle, the Tribe will remit to the State or its assignee the Revenue Share Payment due in respect of the prior month (the “monthly payment”). For purposes of this Section, the monthly payment shall be eight and one-third percent of the estimated Revenue Share Payment to be paid to the Tribe during such Revenue Sharing Cycle. For the first month of the First Revenue Sharing Cycle, the prior month shall be the last month of the Initial Period.
- (a) When will the other 29 payments in the Initial Period be paid?
 - (b) Who produces or verifies the estimate of the Revenue Sharing Payment for the Revenue Sharing Cycle?
 - (c) Part XI.B.1.(c)(iii) (Page 32) refers to a monthly “true up” of the calculation of the estimated Revenue Sharing Payment to be internally conducted by the Tribe. What is the purpose of this internal “true up” and does it result in any payments to the State?
21. Regarding the application of the rules of the National Indian Gaming Commission (NIGC) in Part V.B. (Page 11), please explain the meaning and effect of the term “. . . even if the 2009 regulations are determined to be invalid or are subsequently withdrawn by the NIGC.”
22. Part V. (Pages 11-16) establishes minimum requirements for Tribal facilities. This section refers to the Tribe’s “Record Retention Policies and Procedures.”
- (a) Please provide a true copy of this document.
 - (b) Please explain why this document was not incorporated by reference as a part of the compact.
 - (c) Explain the effect on the compact of future changes to these policies and procedures by the Tribe, including whether such changes would be valid under the compact and effectively change the terms of the compact.
23. Part VI.C. and Part XVIII.G. (Pages 16 and 44 respectively) refer to the “Employee Fair Treatment and Dispute Resolution Policy.”
- (a) Please provide a true copy of this document.
 - (b) Please explain why this document is not incorporated by reference as a part of the proposed compact.

- (c) Explain the effect on the proposed compact of future changes to Tribal policy and whether such changes would be valid under the proposed compact, effectively changing the terms of the proposed compact?
- (d) Please confirm whether any provisions in that document comply with the provisions in ch.2009-170, L.O.F., that require the Tribe to provide its employees with a process for employee disputes that permits the employee to be represented by an attorney or other legally-authorized representative.
- (e) Please confirm whether any provisions in that document comply with the provisions in ch. 2009-170, L.O.F., that permit an employee to use language interpreters, including interpreters for the deaf or hard of hearing.

24. Part VI.D.4. (Pages 17-18) provides that a patron may bring a tort claim against the Tribe in any court of competent jurisdiction in Broward County.

- (a) Please advise whether it is the intent of this provision to limit a patron's legal right to file tort claims against the Tribe in any other court in this state.
- (b) If the intent of this provision is to so limit a patron's right, what is the justification for this limitation on Florida citizens and visitors?

If there is any additional information or documentation that you think would help clarify our understanding of the proposed compact, please provide that information or documentation. Further, if you need additional clarification regarding the questions in this letter, please do not hesitate to contact the staff of the Committee on Regulated Industries.

Once again, thank you very much for your review and response to these questions.

Very truly yours,



James Rhea, Staff Director
Committee on Regulated Industries

/jpr

cc: Senator Jeffrey H. Atwater, President of the Senate
Senator Dennis L. Jones, Chair, Committee on Regulated Industries
Senator Alex Diaz de la Portilla, Majority Leader
Senator Alfred Lawson, Jr., Minority Leader