Seminole Gaming Compact Part II: Whether Senate Bill 788 Satisfies the Compact Process Requirements as Written

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I. INTRODUCTION ........................................................................................................... 296
II. INDIAN GAMING GENERALLY .............................................................................. 297
   A. Indian Gaming Regulatory Act ........................................................................... 298
   B. Indian Gaming Jurisdiction .................................................................................. 298
   C. Obtaining Class III Gaming ................................................................................. 300
      1. Prohibited Versus Permitted ............................................................................. 300
III. GAMING COMPACT .............................................................................................. 302
   A. Compact Process ................................................................................................. 303
      1. Indian Land Requirement ................................................................................. 304
      2. Negotiation ........................................................................................................ 305
         a. Authority to Negotiate .................................................................................... 306
      3. Approval by the Department of the Interior ..................................................... 308
         a. Exclusivity Requirement .................................................................................. 308
         b. Power to Unilaterally Grant Gaming ................................................................ 309
IV. FLORIDA GAMING HISTORY .............................................................................. 310
   A. Seminole Gaming ................................................................................................. 311
      1. First Compact ...................................................................................................... 312
      2. Failure of First Compact .................................................................................... 313
   B. Senate Bill 788 ..................................................................................................... 315
      1. Applying the Compact Requirements to Senate Bill 788 ................................. 316
         a. Indian Land Requirement .............................................................................. 316
         b. Negotiation Process ....................................................................................... 317
         c. Approval by the Department of the Interior .................................................. 318
V. CONCLUSION ............................................................................................................ 320

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I. INTRODUCTION

On May 8, 2009, the Florida Legislature approved Senate Bill 788. The bill would grant the Seminole Indian Tribe of Florida (Seminole Tribe) the right to operate casino style gambling, in exchange for $2.2 billion paid to the State of Florida over fifteen years. Faced with a rapidly approaching deadline, the success of Senate Bill 788 remained unclear as of August 1, 2009, due to the various requirements the bill must satisfy. First, Florida Governor, Charles Crist, has to negotiate the compact with the tribe. If negotiations are successful, the deal would still have to be approved by the Florida Legislature and the federal government. Similar to the events that took place during the failed compact of 2007, "[f]ederal officials have threatened to step in and set rules for the tribe if the state fails to act. In that case, the state would get nothing from the tribe." The difficulty in having Senate Bill 788 enacted represents how complex negotiating a gaming compact can be. In 1979, the first bingo parlor operating on a reservation was opened by the Seminole Tribe. The Seminole Tribe first sought to negotiate a compact permitting Class III gaming beginning in 1991. Seventeen years after the first compact negotiation and after four different governors entered office in Florida, a compact allowing Class III gaming still has not been solidified.

Reminiscent of the 2007 failed compact, it appears that the requirements that must be met to finalize Senate Bill 788 will once again result in a substantial amount of litigation. According to the Seminole Tribe’s attorney, the compact as currently written lacks the granting of exclusive gaming

1. Mary Ellen Klas, New Deal on Gambling OK’d, MIAMI HERALD, May 9, 2009, at B1.
2. Id.
3. See id.
5. Id.
6. Fla. House of Representatives v. Crist, 999 So. 2d 601, 605 (Fla. 2008). The Department “urged Governor Crist to negotiate a compact, warning that if a compact was not signed by November 15, 2007, the Department would finally issue procedures.” Id.
9. Id. at 287.
10. Crist, 999 So. 2d at 605.
11. See id.
12. See Kam, Gaming Deal, supra note 4.
SEMINOLE GAMING COMPACT PART II

rights to the Seminole Tribe as required by federal law. Considering the complicated process which must be followed before a compact can be reached, this article will evaluate whether Senate Bill 788 satisfies the compact requirements imposed by Florida and federal law.

Part II of this article will discuss the law that applies to the type of gaming contained in Senate Bill 788. Part III is an analysis of the compact process and the important issues which are raised when a tribe wants to conduct gaming that requires state approval. Part IV evaluates the failed 2007 compact, and applies the compact process to Senate Bill 788. Finally, part V determines whether Senate Bill 788 satisfies the complex compact requirements.

II. INDIAN GAMING GENERALLY

Indian gaming produces over twenty-six billion dollars in revenues a year. Over 200 tribes operate the 400 Indian gaming establishments that exist in the United States. Considering the substantial potential for revenue, it is not surprising that the process a tribe must go through in order to receive gaming rights is competitive, highly politicized, and often vigorously disputed. Further complicating this procedure are jurisdictional and sovereignty issues. The Indian Commerce Clause of the United States Constitution specifies that only Congress can supersede Indian sovereignty on Indian owned lands. Therefore, to determine whether an Indian tribe can conduct gaming in a state, the rules promulgated by the federal government must be examined.

13. Id.
14. See Rosenberg, supra note 8, at 289.
17. See id. at 972.
19. See U.S. CONST. art. I, § 8, cl. 3.
20. Lindner-Cornelius, supra note 18, at 688 (“The states have a limited role in tribal relationships. The federal government preempts state power in almost all situations.”).
A. Indian Gaming Regulatory Act

Congress enacted the Indian Gaming Regulatory Act (IGRA) in 1988, which created a statutory framework for Indian gaming.\(^{21}\) The purpose of IGRA is stated as “to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self sufficiency, and strong tribal governments.”\(^ {22}\) During the late 1980s, the vast majority of Native Americans living on reservations faced extreme poverty.\(^ {23}\) Therefore, gaming was considered a method for allowing the tribes to become less dependent on government funding, and promote economic self-determination.\(^ {24}\) Because Congress was attempting to promote economic independence among the tribes while also preserving the states’ role regulating gaming, IGRA is “[w]idely regarded as a political compromise.”\(^ {25}\) The result is a complex procedure set forth to grant gaming rights to tribes, which is limited by the states’ right to control certain types of gaming.\(^ {26}\) The states power to regulate gaming on Indian land is determined by the class of gaming, because each class raises separate jurisdictional issues.\(^ {27}\)

B. Indian Gaming Jurisdiction

IGRA separates gaming into three categories.\(^ {28}\) Class I gaming includes social games that are played only for a prize of nominal value.\(^ {29}\) It also includes traditional tribal gambling, including celebrations and ceremonies.\(^ {30}\)

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23. Kathryn R.L. Rand, There Are No Pequots on the Plains: Assessing the Success of Indian Gaming, 5 Chap. L. Rev. 47, 53 (2002) [hereinafter Rand, Pequots]. Native Americans “were poor, unemployed, and living in overcrowded and inadequate housing in communities with minimal government services.” Id.
28. Id. § 2703(6)–(8).
29. Id. § 2703(6).
30. Id.; see also Henderson, supra note 26, at 205 ("American Indians, prior to European contact, participated in a multitude of games and gaming activities. Gambling figured prominently... and was an important social activity.").
Class I gaming cannot be controlled by federal or state government because tribes have the exclusive right to regulate this form of gaming.\textsuperscript{31} Class II gaming excludes games that are not banked, electronic, or slot machines.\textsuperscript{32} Therefore, Class II gaming predominately consists of bingo and card games that are either, "explicitly authorized by the laws of the State, or are not explicitly prohibited by the laws of the State and are played at any location in the State."\textsuperscript{33} Tribes maintain the jurisdiction to regulate Class II gaming, subject to the federal government's approval.\textsuperscript{34} Finally, Class III gaming is defined by exclusion as "all forms of gaming that are not [Cl]ass I gaming or [C]lass II gaming."\textsuperscript{35} Class III, which is the most profitable, consists of "high stakes, casino-style gambling—slot machines, blackjack, craps, pari-mutuel wagering and lotteries."\textsuperscript{36} Before a tribe can conduct Class III gaming, there are several requirements which must be satisfied.\textsuperscript{37}

Although a tribe must satisfy statutory requirements before it can conduct Class III gaming, the state still does not have jurisdiction to enforce its gaming laws on tribal land absent a compact.\textsuperscript{38}

It is true that, under § 1166(a), all state Class III gambling laws "apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State." But in the same breadth, Congress granted the United States exclusive jurisdiction to enforce those state laws.\textsuperscript{39}

Although the states do not have jurisdiction to enforce their gaming laws absent a compact, their laws remain applicable because the act also acknowledges state interests.\textsuperscript{40} Therefore, before a tribe can conduct Class III gaming, the requirements set forth in IGRA must be satisfied.\textsuperscript{41}

\textsuperscript{32.} Id. § 2703(7)(B).
\textsuperscript{33.} Id. § 2703(7)(A)(ii)(I)–(II).
\textsuperscript{34.} Id. § 2710(b)(1)(A).
\textsuperscript{35.} Id. § 2703(8).
\textsuperscript{36.} Rosenberg, supra note 8, at 289.
\textsuperscript{37.} See 25 U.S.C. § 2710(d).
\textsuperscript{38.} See Sycuan Band of Mission Indians v. Roache, 54 F.3d 535, 543–44 (9th Cir. 1994) (holding the state did not have jurisdiction to prosecute a tribe for conducting gaming on a reservation).
\textsuperscript{39.} Id. at 541 (quoting 18 U.S.C. § 1166(d) (2006)).
\textsuperscript{40.} See 25 U.S.C. § 2701(5).
\textsuperscript{41.} See id. § 2710(d)(1)(A)–(B).
C. Obtaining Class III Gaming

Because Class III gaming is the most profitable, it is the most disputed form of gaming, and invokes a delicate balance between the state’s power to regulate, and the tribe’s sovereign rights. Therefore, IGRA specifies three requirements for Class III gaming to lawfully be conducted on Indian land. First, the gaming must be authorized by the tribe pursuant to an ordinance or resolution. Second, the state the tribe wishes to conduct gaming in must permit “such gaming for any purpose, by any person organization, or entity.” Third, the state and the Indian tribe must enter into a compact which permits the gaming activity. These complex set of rules were “the result of a congressional compromise between the demands of state and tribal governments.” While each of these requirements present their own issues, the compact process is particularly complex.

1. Prohibited Versus Permitted

A tribe’s right to seek Class III gaming is contingent on the activity being “conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.” A state has the power to prohibit Class III gaming on Indian land, but only if the same restriction applies everywhere in the state without an exception. Therefore, a tribe’s right to pursue Class III gaming depends on whether or not the gaming is prohibited in the state.

When looking to enforce the state gaming laws on tribal land, the federal government will apply the law “in the same manner and to the same extent as such laws [would] apply elsewhere in the [s]tate.” When the federal government determines what type of gambling is legal in the state, it must decide whether the state prohibits Class III gaming. While a state can pro-

42. See Rand, Pequots, supra note 23, at 52.
44. Id. § 2710(d)(1)(A).
45. Id. § 2710(d)(1)(B).
46. Id. § 2710(d)(1)(C).
48. See Rosenberg, supra note 8, at 289–90.
51. See Rand, Tribal Influence, supra note 16, at 983.
hibit certain forms of gaming, it does not have jurisdiction to regulate gaming. Therefore, whether a state can prevent a tribe from conducting Class III gaming turns on whether the state is prohibiting or regulating the particular gaming. Currently, federal courts dispute when a state crosses the line of prohibiting Class III gaming and begins regulating Class III gaming.

Courts use two tests to determine whether a state permits Class III gaming as defined by IGRA. The first test used to determine whether a state prohibits or permits a particular type of gaming is the game-specific approach. Under this approach a state does not permit a type of gaming unless the “state allows a particular game for any purpose.” The second test used by courts is the categorical approach. The categorical approach holds that a state must permit all forms of Class III gaming, if any form of Class III gaming is permitted in the state. Consequently, whether a state is considered to permit a particular type of gaming depends on the test adopted by the court of the jurisdiction.

One way a state can avoid being forced to negotiate a compact is by arguing that the type of gaming the tribe is seeking violates the state’s public policy. For example, in Rumsey Indian Rancheria of Wintun Indians v. Wilson, an Indian tribe filed suit to force the state to negotiate a gaming compact. At the time of suit, California did not permit “banked or percentage card games” to be conducted. The court held that when a state does not permit the type of gaming that the tribe is requesting, the tribe does not have a right to engage in the illegal gaming. Therefore, the court held that the state did not have to negotiate with the tribe to grant it a form of gaming

55. Id. § 2710(d).
56. N. Arapaho Tribe, 389 F.3d at 1310–11.
57. Id.
58. N. Arapaho Tribe, 389 F.3d at 1311; see Rumsey Indian Rancheria of Wintun Indians v. Wilson, 64 F.3d 1250, 1258 (9th Cir. 1994).
59. Id. (citing Mashantucket Pequot Tribe v. Conn., 913 F.2d 1024, 1031–32 (2d Cir. 1990) (adopting the categorical approach)).
60. Id.
61. See id.
62. Rosenberg, supra note 8, at 292.
63. Id. at 255.
64. Id. at 1256.
65. Id. at 1258.
that was otherwise not permitted. 68 However, in *LAC du Flambeau Band of Lake Superior Chippewa Indians v. State*, 69 an Indian tribe brought an action to force the state to negotiate a gaming compact. 70 The court held that because the state permits Class III gaming, it must negotiate a compact with the tribe that would grant the tribe permission to conduct Class III gaming. 71 The dividing line between these two cases can be drawn at each state’s public policy. 72 In *Rumsey*, the state’s public policy towards gaming was prohibitory, thus the state did not have to negotiate a compact for Class III gaming. 73 However, in *Lac du Flambeau Band*, the state’s policy against gaming was regulatory, resulting in the state being forced to negotiate a compact. 74

### III. GAMING COMPACT

If the type of gaming the tribe seeks to conduct is authorized by the tribe’s governing body, and the state does not prohibit the type of gaming, next the tribe must enter a compact with the state to obtain Class III gaming. 75 IGRA provides that a tribe cannot operate Class III gaming unless specifically permitted by a tribal-state compact signed by the tribe and the state where the Class III gaming is being conducted. 76 A compact is a covenant or agreement between states or governments. 77 Under the United States Constitution, a state cannot enter into a compact with another state or foreign power. 78 IGRA, however, eliminates this restriction by setting forth the consent of Congress to all gaming compacts to be executed, contingent on federal approval making them effective. 79 IGRA’s requirements that a tribe reaches a compact with the state before it can conduct Class III gaming has important ramifications by making “the tribes’ sovereign right to conduct gaming dependent on state consent.” 80 Therefore, the Act prevents a tribe

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68. See id. The state did not allow banked card games. *Rumsey Indian Rancheria of Wintun Indians*, 64 F.3d at 1256. The state did not have to give the tribe a form of gaming that others could not have. Id. at 1258.


70. Id. at 481.

71. Id. at 488.

72. See id.

73. See *Rumsey Indian Rancheria of Wintun Indians*, 64 F.3d at 1259.

74. See *LAC du Flambeau Band of Lake Superior Chippewa Indians*, 770 F. Supp. at 488.


76. See id.


from conducting profitable Class III gaming, without first obtaining a compact signed by the state.81

A. Compact Process

The importance of the tribal-state compact to Indian gaming is clear. "The essential feature of the Act is the tribal-state compact process, the means Congress devised to balance the states' interest in regulating high stakes gambling within their borders and the Indians' resistance to state intrusions on their sovereignty."82 The process a tribe must follow to negotiate a compact under IGRA can be summarized as follows. First, the tribe must request that the state negotiate a compact that would permit Class III gaming.83 Once a request to negotiate is made by the tribe, IGRA requires that the state "negotiate with the Indian tribe in good faith to enter into such a compact."84 If an agreement is not reached within 180 days of the tribes request to negotiate a compact, the tribe is permitted to sue the state in federal court by alleging the state did not negotiate in good faith.85 If the federal court finds that the state did not act in good faith, the state will be ordered to reach a compact with the tribe within sixty days.86 Upon the expiration of the sixty-day negotiation period, if a compact has not been reached, the court will appoint a mediator.87 Both the tribe and the state are required to submit proposed compacts to the mediator.88 Next, the mediator will select one of the proposed compacts.89 Once a proposal is selected by the mediator, the proposal is presented to each party and the state must consent to the proposed compact within sixty days.90 Once the compact is submitted to the Department of the Interior, the compact will be approved or disapproved within

81. Id. at 288–89.
83. Laxague, supra note 47, at 80. The tribal-state "process begins when the Indian tribe requests that the state enter into negotiations for creating a tribal-state compact that will govern the Class III gaming operations planned by the tribe." Id.
85. Id. § 2710(d)(7)(B); Laxague, supra note 47, at 80 (explaining that bad faith can be based on criminality, financial integrity, public safety, and "economic impact on existing gaming" facilities).
87. Id. § 2710(d)(7)(B)(iv).
88. Id.
89. Id. When selecting one of the proposed compacts the mediator will choose "the one which best comports with the terms of [IGRA] and any other applicable Federal law and with the findings and order of the court." Id.
forty-five days.\textsuperscript{91} The remainder of part III evaluates the most common issues which arise during the compact process.

1. Indian Land Requirement

Whether a tribe is able to pursue the compact process is dependent on the status of the tribe’s land.\textsuperscript{92} IGRA defines Indian land as land located within an Indian reservation, land that is held in trust by the United States, or held in trust by someone else who is restricted by the United States.\textsuperscript{93} Furthermore, for a tribe to have the right to conduct gaming on its land, the land must have become Indian land before October 17, 1988.\textsuperscript{94} Without the requisite land, a tribe cannot utilize IGRA to obtain gaming rights and would have to argue that it qualifies for an exception.\textsuperscript{95} If the tribe does not qualify under an exception, the last method of obtaining the requisite land is through the federal government, “if the Secretary of the Interior determines . . . it would be in the best interest of the tribe, would not be detrimental to surrounding communities, and that state and local officials [would] agree.”\textsuperscript{96} With states reluctant to approve gaming being conducted off of an Indian reservation, a tribe faces a difficult task if the land was not recognized before 1988.\textsuperscript{97} Additionally, “it is clear that the [s]tate does not have an obligation to negotiate with an Indian tribe until the tribe has Indian lands.”\textsuperscript{98} Therefore, without land satisfying the requirements of IGRA, the tribe cannot pursue the compact process to obtain gaming rights.\textsuperscript{99}

Further restricting a tribe’s ability to seek gaming rights is the Court’s recent decision in \textit{Carcieri v. Salazar}.\textsuperscript{100} In this case, the Department of the Interior accepted land in trust to be used by an Indian tribe.\textsuperscript{101} The Governor of Rhode Island brought suit to have the Department of the Interior’s decision to take the land in trust reviewed.\textsuperscript{102} The Court addressed 25 U.S.C. §

\begin{itemize}
\item \textsuperscript{91} \textit{See id.} § 2710(d)(8)(C). If no action is taken, “the compact shall be considered to have been approved by the Secretary.” \textit{Id.}
\item \textsuperscript{92} Alan E. Brown, Note, \textit{Ace in the Hole: Land’s Key Role in Indian Gaming}, 39 SUFFOLK U. L. REV. 159, 161 (2005).
\item \textsuperscript{93} \textit{See} 25 U.S.C. § 2719(a) (2006).
\item \textsuperscript{94} \textit{Id.}
\item \textsuperscript{95} \textit{See id.} § 2719(a)–(b).
\item \textsuperscript{96} Brown, \textit{supra} note 92, at 168.
\item \textsuperscript{97} \textit{Id.} at 166–68.
\item \textsuperscript{98} Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Engler, 304 F.3d 616, 618 (6th Cir. 2002) (citing 25 U.S.C. § 2710(d)(3)(A)).
\item \textsuperscript{99} \textit{See id.}
\item \textsuperscript{100} 129 S. Ct. 1058 (2009).
\item \textsuperscript{101} \textit{Id.} at 1060.
\item \textsuperscript{102} \textit{Id.}
\end{itemize}
465, which allows the Secretary of the Department of the Interior (Secretary) to accept land in “trust only for ‘the purpose of providing land for Indians.’” The Court held “that the term ‘now under Federal jurisdiction’ in § 479 unambiguously refers to those tribes that were under the federal jurisdiction of the United States when the IRA was enacted in 1934.” Although the ramifications of the recent decision remain unclear, it appears that the decision will limit the power of the Secretary. Further, less tribes will have the opportunity to acquire the land necessary to obtain gaming rights as the Secretary lacks “authority to acquire land for a tribe recognized and coming under federal jurisdiction after 1934.”

2. Negotiation

Once a tribe shows they have land eligible to conduct Class III gaming, the tribe must negotiate with the state to reach a compact. Once the tribe requests that the state negotiate a compact, IGRA specifies that “the state shall negotiate with the Indian tribe in good faith to enter” such a compact. If the tribe believes that the state did not conduct negotiations in good faith, IGRA grants the tribe the power to sue the state in federal court. To determine whether the state negotiated in good faith, the court will evaluate “the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities.” If the Court concludes that the state acted in good faith, the compact process ends. However, if the court finds that the state “failed to negotiate in good faith,” the compact process continues. This provision of IGRA was severely limited by the Court’s decision in Seminole Tribe of Florida v. Florida (Seminole Tribe II). Seminole Tribe II held when a state asserts the Eleventh Amendment’s sovereign immunity, the state cannot be sued by the

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104. Id. at 1068.
106. Id.
108. Id.
109. Id. § 2710(d)(7)(A)(i).
110. Id. § 2710(d)(7)(B)(iii)(I).
111. See id. § 2710(d)(7)(B)(iii).
tribe in federal court. The Court’s ruling limited the power a tribe has to engage in Class III gaming. Therefore, Seminole Tribe II left the negotiation process procedure unclear. “One possibility is that there is a right but no remedy: a tribe can seek a compact, but cannot sue the state if it refuses to negotiate.”

a. Authority to Negotiate

Although IGRA sets forth the requirements a state must follow to enter a compact with an Indian tribe, and even requires that the state negotiate in good faith, IGRA does not specify the role of state legislatures. In the absence of guidelines, the governors of most states have exercised the authority to negotiate tribal-state compacts with Indian tribes. Therefore, due to the lack of federal guidelines, the authority to negotiate is determined by state law.

Some courts have held that the state’s governor has the authority to negotiate a gaming compact. Dewberry v. Kulongoski is an example of a state that grants the governor authority to negotiate a compact with a tribe. In Dewberry, opponents of gambling challenged the validity of a compact that was signed by the Governor. The plaintiff claimed that the compact was invalid because “neither the Oregon Constitution nor Oregon statute delegate the authority to execute gaming compacts with Indian tribes, and thus the Governor is without the power to do so without legislative approval.” The court disagreed, however, and held that the Oregon Constitution granted the Governor the authority to negotiate a gaming compact.

114. Id. at 72.
116. See id.
117. ROBERT M. JARVIS ET AL., GAMING LAW CASES AND MATERIALS 493 n.3 (2003).
119. Id.
120. Id. at 982.
121. See Dairyland Greyhound Park, Inc. v. Doyle, 719 N.W.2d 408, 443–44 (Wis. 2006) (Compact entered into by the governor was valid even though it increased the amount of gambling allowed in the state.).
123. Id. at 1157.
124. Id. at 1138.
125. Id. at 1154.
126. Id.
In contrast, the majority of state courts have held that, although the governor has the authority to negotiate a compact, the governor lacks the authority to bind the state to the compact without legislative approval.\textsuperscript{127} While the holdings are not identical, challenges to the governor's authority have a common theme—questions regarding the state's constitution.\textsuperscript{128} In line with these state court decisions, federal courts have also held that the governor lacks the power to bind the state to a gaming compact.\textsuperscript{129} For example, in \textit{Pueblo of Santa Ana v. Kelly},\textsuperscript{130} the court held that the governor entering into a compact solely by himself was not enough to make the compact valid.\textsuperscript{131} Further, because "the [g]overnor lacked the authority to bind the state . . . [t]he compact[] [provisions] were therefore never validly 'entered into' by the state and, as a result, do not comply with IGRA."\textsuperscript{132} While all of these cases do not have the same outcome, they share in common the procedure of turning to the state's constitution to determine if the governor's action were valid.\textsuperscript{133}

It should also be noted that if a member of a tribe had an issue with a compact that was entered into between the state and their tribe, he or she would likely have no recourse.\textsuperscript{134} In \textit{Langley v. Edwards},\textsuperscript{135} the court held that a tribe member could not challenge the validity of a compact entered into by a tribe and state.\textsuperscript{136} The court explained that the tribe members' "dissatisfaction is with the Tribe's decision to permit gaming on tribal lands and should be properly resolved within the tribal governmental and court structure."\textsuperscript{137} Similarly, in \textit{Willis v. Fordice},\textsuperscript{138} an Indian tribe member brought an action to have a tribal-state compact declared void.\textsuperscript{139} The court ruled that

\textsuperscript{127} See Fla. House of Representatives v. Crist, 999 So. 2d 601, 609 (Fla. 2008) (discussing states that have followed the majority rule that a governor lacks the "authority to bind a state to an IGRA compact . . . ").
\textsuperscript{129} See \textit{Pueblo of Santa Ana v. Kelly}, 104 F.3d 1546, 1559 (10th Cir. 1997).
\textsuperscript{130} \textit{Id.} at 1546.
\textsuperscript{131} \textit{Id.} at 1559.
\textsuperscript{132} \textit{Id.}
\textsuperscript{135} \textit{Id.} at 1531.
\textsuperscript{136} \textit{Id.} at 1536.
\textsuperscript{137} \textit{Id.}
\textsuperscript{138} 850 F. Supp. 523 (S.D. Miss. 1994).
\textsuperscript{139} \textit{Id.} at 524–25.
the tribe member did not have standing to bring the action and held that the compact was valid under both state and federal law.  

3. Approval by the Department of the Interior

If the state and the Indian tribe enter into a compact, it then must be approved by the Secretary of the Department of the Interior. Therefore, even if the state and the tribe negotiate a compact, it will not take effect until approved by the Secretary who "is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State government gaming on Indian lands of such Indian tribe." When reviewing the compact, the Secretary can disapprove it if the compact violates "the trust obligations of the United States to Indians." This authority to disapprove the compact has been used to place restrictions on the compact that the Secretary is willing to approve.

a. Exclusivity Requirement

The Department of the Interior has used its statutory authority to require that a gaming compact grant the tribe exclusive gaming rights. Citing the federal governments trust responsibility, the Department stresses it will only approve "compacts that provide substantial exclusivity for Indian gaming in the state." Because of this substantial exclusivity requirement, a compact is much more likely to be approved if the tribe is permitted to conduct gaming that is prohibited everywhere else in the state. Therefore, the exclusivity requirement can be summarized as:

[T]he Tribes enjoy the exclusive "right to operate" so long as the Tribes are the only persons or entities who have and can exercise the "right to operate" electronic games of chance in the State or, in

140. Id. at 528–29, 534 (The compact was valid because Mississippi allowed legalized gambling as a matter of public policy, the governor held the power to negotiate with the tribe, and the compact was approved by the Secretary.).
142. Id. § 2710 (d)(8)(A); see also id. §2710 (d)(3)(B).
143. Id. § 2710 (d)(8)(B)(iii).
145. Id.
146. Id.
other words, as long as all others are prohibited or shut out from the “right to operate” such games.148

An example of the exclusivity requirement is present in Artichoke Joe’s California Grand Casino v. Norton,149 where a card club brought an action on equal protection grounds challenging the validity of tribal-state compacts, which were approved by IGRA.150 The plaintiffs were prohibited from engaging in casino-style gaming, but the compacts provided the Indian tribes with the exclusive right to engage in Class III gaming.151 Despite the Indians being granted the exclusive right to conduct Class III gaming in the state, the court rejected the plaintiff’s argument that the compact constituted a monopoly.152 Therefore, the court held that the tribal-state compact was valid under IGRA, and the compact did not violate the Plaintiff’s right of equal protection.153

b. Power to Unilaterally Grant Gaming

In response to Seminole Tribe II, the Secretary proposed and had approved rules that would permit the creation of Class III gaming without the state entering a compact with the tribe.154 As a result of the rules, a tribe can now obtain gaming rights in a state that does not approve of a compact.155 “In sum, these regulations allow the Secretary to approve a gaming compact after a suit is brought under IGRA and the state has asserted its Eleventh Amendment right against suit in federal court.”156 Although the Secretary has been granted such power, it remains unclear whether or not granting this power is valid.157

There have only been a few judicial opinions which address the issue of whether the Secretary of the Interior has the authority to grant the tribe Class

149. 353 F.3d 712 (9th Cir. 2003), cert. denied, 543 U.S. 815 (2004).
150. Id. at 714. The plaintiff’s challenged the compact which was entered into “[p]ursuant to an amendment to the California Constitution that permits casino-style gaming only on Indian lands.” Id.
151. See id.
152. Id. at 739 (“[W]e are unpersuaded by Plaintiffs’ argument that allowing California to grant to tribes a monopoly on [C]lass III gaming operations, restricted to Indian lands, necessarily will lead to Indian monopolies on other forms of economic activity.”). 153. Artichoke Joe’s Cal. Grand Casino, 353 F.3d at 742.
155. Lindner-Cornelius, supra note 18, at 693.
156. Id.
157. See id. at 686.
III gaming without a tribal-state compact.\footnote{Laxague, supra note 47, at 83.} Possible support of the Secretary’s power can be found in Seminole Tribe of Florida v. Florida (Seminole I),\footnote{11 F.3d 1016 (11th Cir. 1994), aff’d on other grounds, 517 U.S. 44 (1996).} where the Eleventh Circuit stated the Secretary, after the state asserts Eleventh Amendment immunity, the case is dismissed, and the Secretary is notified of the failed negotiation, “then may prescribe regulations governing [C]lass III gaming on the tribe’s lands.”

In Spokane Tribe of Indians v. Washington,\footnote{Seminole Tribe I, 11 F.3d at 1029 (dictum). See Seminole Tribe II, 517 U.S. 44, 76 n.18 (1996) (The court did not address the issue of whether the Secretary had the power to proscribe Class III gaming without a compact.).} the Secretary’s power was explicitly rejected when the court stated, “[t]he Eleventh Circuit’s solution would turn the Secretary of the Interior into a federal czar, contrary to the congressional aim of state participation.” The court supported its statement by arguing that under IGRA, the Secretary of the Interior should only be consulted after a mediator is appointed by the court to direct negotiations between the state and the tribe.\footnote{28 F.3d 991 (9th Cir. 1994).} Even after the negotiations occur, the Ninth Circuit explained, “the Secretary of the Interior under the statute is to act only as a matter of last resort.”\footnote{Id. at 997.} Similarly, in Texas v. United States,\footnote{Id. at 997.} the court held that the Secretary did not have the authority to proscribe Class III gaming when the state does not consent to being sued.\footnote{497 F.3d 491 (5th Cir. 2007).} Although it remains unclear whether the Secretary’s power to grant gaming rights to the tribe without the state’s consent is valid, the severity of the threat itself is enough for it to be taken seriously by a state.\footnote{Id. at 512.}

IV. FLORIDA GAMING HISTORY

Originally the State of Florida was exceedingly opposed to any form of gambling.\footnote{See Neil Scott Cohen, Note, In What Often Appears to Be a Crapshoot Legislative Process, Congress Throws Snake Eyes When It Enacts the Indian Gaming Regulatory Act, 29 Hofstra L. Rev. 277, 301 (2001).} However, over time this immense opposition was gradually

\footnote{158. Laxague, supra note 47, at 83.} \footnote{159. 11 F.3d 1016 (11th Cir. 1994), aff’d on other grounds, 517 U.S. 44 (1996).} \footnote{160. Seminole Tribe I, 11 F.3d at 1029 (dictum). See Seminole Tribe II, 517 U.S. 44, 76 n.18 (1996) (The court did not address the issue of whether the Secretary had the power to proscribe Class III gaming without a compact.).} \footnote{161. 28 F.3d 991 (9th Cir. 1994).} \footnote{162. Id. at 997.} \footnote{163. Id.} \footnote{164. Id.} \footnote{165. 497 F.3d 491 (5th Cir. 2007).} \footnote{166. Id. at 512.} \footnote{167. See Fla. Const. art. X, § 7. “Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state.” Id.}
reduced as more forms of gaming became permitted in the state. In the 1930s Florida permitted legal betting which included betting on jai alai, horse races, and dog races. "Beginning in 1978, Florida voters thrice rejected constitutional amendments that would have forced the state to allow casino gambling. But Florida’s political leaders have allowed legal gambling to gradually increase throughout the state anyway." The first cruise ship offering day cruises for gamblers set sail in the early 1980s, and in 1986 Florida voters approved the creation of a state-run lottery. In addition, in 2004, a voter’s petition amended the Florida Constitution to allow Class III slots in both Broward and Miami-Dade Counties.

A. Seminole Gaming

The first controversy surrounding Seminole gaming in Florida began in 1979 when the Tribe opened a bingo hall facility on the Seminole Reservation in Broward County. In Seminole Tribe of Florida v. Butterworth, the Seminole Tribe requested that the court “enjoin permanently the Sheriff of Broward County from enforcing Florida’s bingo statute on Indian land.” The court ruled in favor of the Tribe, holding that because of the Tribe’s sovereignty, its bingo hall could not be regulated by the state. Shortly after the Seminole Tribe’s favorable ruling in Butterworth, Congress enacted IGRA, which afforded tribes the right to negotiate a compact with the state. Despite the adoption of the IGRA, the Seminole Tribe has not been successful in negotiating a compact with the State of Florida.

170. Id.
171. Id.
172. Id.
173. FLA. CONST. art. X, § 23.
174. See Rosenberg, supra note 8, at 287. "In 1979, the Seminole Tribe of Florida opened the first reservation-based bingo parlor." Id.
176. Id. at 1016. The statute provided that bingo could not be conducted more than twice a week and limited the amount of money that could be won. Id. at 1016 n.1.
177. Id. at 1020.
1. First Compact

The negotiation of a gaming compact often becomes a political affair, and the State of Florida is no exception to this trend. After the Seminole Tribe’s unsuccessful attempt to compel the State of Florida to negotiate a compact, the Tribe continued to petition the Department of the Interior (Department). After several failed attempts, the Tribe convinced the Department to take affirmative action in 2006, when the Department proclaimed that if the State of Florida did not sign a compact with the Seminole Tribe within sixty days, the Department would grant the Seminole Tribe Class III gaming. However, the Seminole Tribe sued the Department after sixty days had passed, because a compact was not reached and the Department failed to initiate procedures allowing the Seminole Tribe to conduct Class III gaming. This suit prompted the Department to once again send a demand to the State of Florida, and Governor Crist was advised to enter a compact. November 15, 2007, was set as a deadline for the compact to be entered into with the threat that if a compact was not reached, Class III gaming would be granted to the Seminole Tribe unilaterally, and the state would miss its opportunity to share in the profits.

Seemingly compelled by the Department’s threat, Governor Crist entered into a compact with the Tribe. To support his decision, “Crist argued the deal was needed to ensure that Florida got a share of Indian gambling revenues.” However, five days after Governor Crist signed the compact, the Florida House of Representatives filed a petition that challenged the validity of the compact. The petition challenged the “Governor’s authority to bind the [s]tate to the [C]ompact without legislative authorization or ratification.” Despite the immediate challenge to the compact, it went into effect on January 7, 2008, after it was approved by the Secretary.

180. See Rand, Pequots, supra note 23, at 52.
181. Crist, 999 So. 2d at 605.
182. Id.
183. Id.
184. Id.
185. See Dara Kam, Fight Brewing over Feds’ Vow to Expand Seminole Gambling, PALM BEACH POST, Nov. 9, 2007, at A5. “Interior Department Assistant Secretary Carl Artman has warned Crist that federal officials will establish Class 3 procedures for the Seminoles if a compact is not signed by Nov. 15.” Id.
186. See Crist, 999 So. 2d at 605–06.
188. Crist, 999 So. 2d at 606.
189. Id.
190. Id.
The compact allowed Class III gaming to be conducted at seven casinos in the State of Florida within the following counties: Okeechobee, Coconut Creek, Clewiston, Immokalee, Tampa, and two in Hollywood. The Class III gaming that the Tribe was authorized to offer included: slot machines, banked card games, high-stake poker games, and any other gaming authorized in the State of Florida. Because the compact allowed the Seminole Tribe to conduct some Class III gaming, such as banked card games which are prohibited under state law, the Tribe was given an exclusive gaming right. The Seminole Tribe was not the only party that benefited from the compact though; the State of Florida was set to receive fifty million dollars once the compact became effective. In addition to that sum, during the first twenty-four months of the compact’s operation, the State of Florida would receive an additional $175 million, $150 million for the third twelve months of operation, and $100 million for each additional twelve-month cycle.

2. Failure of First Compact

The Florida House of Representatives challenged the validity of the compact by arguing that the Governor acted outside the scope of his authority. The House argued that the Legislature was granted all law-making power under the Florida Constitution. Like cases in other jurisdictions, which addressed a claim that the governor did not have authority to negotiate a compact, the Court looked to the constitution. While turning to the Florida Constitution, the court evaluated whether the Governor’s actions violated the separation of powers doctrine. Article II, section 3 of the Florida Constitution provides that “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” In Florida, the separation of powers doctrine has been

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191. Id.
192. Id.
193. Crist, 999 So. 2d at 606.
194. Id.
195. Id.
196. Id. at 613.
197. See Steve Huettel, Gambling Interests: Where to Draw the Line on Gaming, Money, St. Petersburg Times, Feb. 24, 2008, at P1. Rubio sued Crist “charging the governor overstepped his authority signing the Seminole compact without legislative approval.” Id.
198. Crist, 999 So. 2d at 610.
199. Id. at 610–11.
200. FLA. CONST. art. II, § 3.
strictly construed, thereby favoring a finding of one branch of government usurping another branch’s powers.\textsuperscript{201}

The House argued that the power to enter into a compact belongs to the legislative branch because of residual power.\textsuperscript{202} The basis for the House’s argument is represented by a Supreme Court of Florida decision where the Court held, “\textasciitilde[t]he legislative branch looks to the \textasciitilde[c]onstitution not for sources of power but for limitations upon power.”\textsuperscript{203} Consequently, its argument was that the legislature should receive a power when it is unclear which branch of government it belongs to.\textsuperscript{204} By contrast, the Governor’s argument was based on article IV, section 1 of the Florida Constitution.\textsuperscript{205} Article IV, section 1 of the Florida Constitution grants the Governor the power to “\textasciitildetransact all necessary business with the officers of government.”\textsuperscript{206} Using this language, the Governor argued that he held the power to enter negotiations with the Indian Tribe, and thereby enter into a compact.\textsuperscript{207}

After reviewing both the House’s and the Governor’s arguments, the Supreme Court of Florida determined that the Governor’s actions violated the separation of powers doctrine.\textsuperscript{208} The Court found that the Governor exceeded his power by permitting Class III gaming, an act that was illegal in the state.\textsuperscript{209} “The Governor does not have authority to agree to legalize in some parts of the state, or for some persons, conduct that is otherwise illegal throughout the state.”\textsuperscript{210} The House relied on IGRA’s requirement that for a tribe to enter into a compact, the gaming must be “\textasciitildeconducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.”\textsuperscript{211} The Court cited cases which followed the categorical approach, and determined that allowing some forms of Class III gaming does not mean that all forms are permitted.\textsuperscript{212} The Court stated that both the Secretary’s and federal courts’ interpretations support the House’s argument, which followed the categorical approach to determine whether a particular

\begin{footnotes}
\textsuperscript{201} See Bush v. Schiavo, 885 So. 2d 321, 329 (Fla. 2004).
\textsuperscript{203} See State \textit{ex rel.} Green v. Pearson, 14 So. 2d 565, 567 (Fla. 1943).
\textsuperscript{204} See id.
\textsuperscript{205} Fla. House of Representatives v. Crist, 999 So. 2d 601, 612 (Fla. 2008).
\textsuperscript{206} FLA. CONSTR. art. IV, § 1.
\textsuperscript{207} Crist, 999 So. 2d at 612.
\textsuperscript{208} Id. at 613.
\textsuperscript{209} Id.
\textsuperscript{210} Id.
\textsuperscript{211} 25 U.S.C § 2701(5) (2006); see Crist, 999 So. 2d at 614–15.
\textsuperscript{212} Crist, 999 So. 2d at 615.
\end{footnotes}
form of gaming is prohibited by law. Therefore, because the compact authorized a prohibited form of gaming, the Court held that the compact was a violation of Florida law.

The Supreme Court of Florida’s decision represents the complex history of Seminole gaming in Florida, as the negotiations that have been taking place in some form or another since 1991 were again put to a halt. However, despite the Supreme Court of Florida’s holding, not much has changed for the Seminole Tribe as it continues to conduct business as though the compact is valid.

B. Senate Bill 788

The Supreme Court of Florida ruled the first compact entered into between Governor Crist and the Seminole Tribe invalid on July 3, 2008. By the next legislative session, in 2009, the framework for a new compact was drafted by both the Florida House of Representatives and the Florida Senate. The House bill was drafted to make minor changes, and would require the Seminoles to stop offering games such as blackjack, but allow them to continue to offer Las Vegas-style slot machines. Contrary to the House bill, the Senate bill significantly increases the amount of gaming, by granting the Seminole Tribe extensive Class III gaming including roulette, craps, slot machines, blackjack, and other banked card games, in return for at least four hundred million dollars annually through extensive revenue-sharing provisions. In an effort likely to increase support from both parties, as well as

213. Id.
214. Id.
218. See HB 7129 Staff Analysis, supra note 216, at 1.
219. See SB 788 Staff Analysis, supra note 218, at 1–2.
the public at large, the bill mandates that all revenue payments given to the state must be deposited in the Educational Enhancement Trust Fund.221

Florida's gradual approval of gambling came full circle when lawmakers approved Senate Bill 788 on May 8, 2009.222 One fan of the bill was Governor Crist, who "thanked lawmakers for their vigilance in finding common ground."223 Another initial fan was the Seminole Tribe who stated, the Florida Legislature took a crucial step towards ending the nineteen years of waiting for Las Vegas-style gambling.224 In line with the history of the relationship between the Seminole Tribe of Florida and lawmakers, the initial positive outlook for Senate Bill 788 quickly turned to similar talks of litigation that existed during the previous compact attempt.225 Faced with a deadline of August 31, 2009 to sign the compact with the Seminoles, the question remains whether Senate Bill 788 should satisfy the procedures set forth by the compact process.226

1. Applying the Compact Requirements to Senate Bill 788

Unlike the federal government, "Florida has no statutory framework for establishing gaming compacts with Indian tribes."227 Therefore, determining whether Senate Bill 788 should satisfy the compact process requires applying IGRA and the relevant case law discussed thus far. Furthermore, by comparing the failed compact of 2008 with Senate Bill 788, the chance of success for the new bill can be forecasted.

a. Indian Land Requirement

Before a tribe can benefit from the rights set forth in IGRA, and ultimately engage in compact negotiations with the state, the tribe must have the requisite land.228 Generally, the tribe must have acquired the land before 1988, the year IGRA was enacted, to become eligible to begin the Class III gaming negotiation process.229 However, a recent United States Supreme Court decision appears to have changed this, increasing the difficulty in sa-

221. See id. at 2.
222. Klas, supra note 1. "The Senate voted, 31-9, for the bill (SB 788). In the more anti-gambling House, the vote was 82-35." Id.
223. Id.
224. See id.
225. See Kam, Gaming Deal, supra note 4.
226. See id.
227. HB 7129 Staff Analysis, supra note 216, at 1.
228. See Brown, supra note 92, at 161.
satisfying the land requirement, by holding that a tribe must have had the land in its possession in 1934 in order to be eligible to conduct Class III gaming.\footnote{See Rice, \textit{supra} note 105, at 593–94; Carcieri v. Salazar, 129 S. Ct. 1058, 1068 (2009).} Fortunately, the Seminole Tribe “is a federally recognized Indian tribe whose reservations and trust lands are located in the State” of Florida.\footnote{Fla. House of Representatives v. Crist, 999 So. 2d 601, 605 (Fla. 2008).} Therefore, the Seminole Tribe appears to be unaffected by \textit{Carcieri}, and will likely be able to continue the negotiation process with the State of Florida to acquire Class III gaming rights.\footnote{Id. at 982.}

b. \textit{Negotiation Process}

IGRA does not specify who may represent the state when negotiating a compact with a tribe.\footnote{See id.} Therefore, “[w]ithout prescribed authority in IGRA, the state legislature’s role in the compacting process is left to state law, which may require legislative approval before a tribal-state compact takes effect, or may relegate the legislature to political criticism or support of the governor’s compact negotiations.”\footnote{Id. at 982.} The Supreme Court of Florida made it clear that the Governor does not have the authority to execute a compact that authorizes gambling that is illegal.\footnote{Fla. House of Representatives v. Crist, 999 So. 2d 601, 616 (Fla. 2008).}

Senate Bill 788 allows the Seminole Tribe to conduct types of Class III gaming, which is otherwise illegal in the state.\footnote{SB 788 Staff Analysis, \textit{supra} note 217, at 1.} Furthermore, Florida follows the game-specific approach, which “requires courts to review whether state law permits the specific game at issue.”\footnote{N. Arapaho Tribe v. Wyoming, 389 F.3d 1308, 1311 (10th Cir. 2004) (citing Coeur d’Alene Tribe v. Idaho, 842 F. Supp. 1268, 1278 (D. Idaho 1994)).} Under the game-specific approach, the fact that certain types of Class III games are permitted in the state, such as in Miami-Dade and Broward Counties, is not determinative.\footnote{See id.} Further, this approach holds that because the compact grants some form of Class III gaming that is illegal in the state, the bill authorizes illegal Class III gaming.\footnote{See id.} This means that under the holding of \textit{Crist}, the Governor cannot execute Senate Bill 788 without “the Legislature’s prior authorization or, at least, its subsequent ratification.”\footnote{Crist, 999 So. 2d at 616.}
Fortunately for the success of Senate Bill 788, it implements the holding in *Crist.* Anticipating the same problem faced by the previous compact the Legislature drafted a bill which:

authorizes the [g]overnor 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.

If followed, this provision of Senate Bill 788 will avoid the issues that were fatal to the previous compact. This is because requiring Governor Crist to have the bill ratified, if any changes are made, avoids violating the separation of powers. Although Senate Bill 788 was drafted to avoid the compact from being held invalid due to lack of authority, the authority of Governor Crist to negotiate “expires at the end of the day on August 31, 2009.” Therefore, if one issue arises in the compact process, it could be detrimental to Senate Bill 788.

c. Approval by the Department of the Interior

Before a tribal-state compact granting Class III rights becomes effective, it must be approved by the Department of the Interior. The Department of the Interior has made clear its decision to only approve of compacts that grant the Indian tribes substantially exclusive gaming rights. Rights are deemed substantially exclusive when the tribe receives “the exclusive authorization to operate Class III gaming within the state’s territory.” Therefore, before Senate Bill 788 can become effective, the Department of the Interior must approve the compact. Additionally, the bill will not be

241. See SB 788 Staff Analysis, supra note 217, at 2.
242. Id.
243. See Crist, 999 So. 2d at 616.
244. See FLA. CONST. art. II, § 3. “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided therein.” Id.
245. SB 788 Staff Analysis, supra note 218, at 11.
246. See id.
248. See Lent, supra note 144, at 469.
249. Eidson, supra note 147, at 328.
approved unless the Seminole Tribe is given substantially exclusive gaming rights in the State of Florida.251

Senate Bill 788 “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.”252 This language makes it apparent that the Florida Legislature contemplated the substantial exclusivity requirement of IGRA.253 However, when the standard is applied to the gaming granted to the Seminole Tribe, it seems likely that the Department of the Interior will not consider the requirement to be satisfied.

Under the substantial exclusivity requirement, the State of Florida must grant the Seminole Tribe the exclusive right to conduct a type of Class III gaming.254 However, Senate Bill 788 authorizes the tribe to conduct Class III gaming, which is currently permitted in Miami-Dade and Broward Counties.255 Since the Seminole Tribe has a valid argument that it is not given exclusive gaming rights, this step in the compact process is likely to lead to difficulties in the negotiation. In fact, the lack of exclusivity in Senate Bill 788 has already been an issue in the negotiation process.256 Barry Richard, the Seminole Tribe’s attorney said, “[t]he legislature’s proposal ‘significantly impairs the guarantee of exclusivity’ and thus the profits that the tribe could earn.”257 Because of the issue with Senate Bill 788 not satisfying the substantial exclusivity requirement, as required by the federal government, there could be more delay in the negotiation process, which ultimately could result in a deal not being reached by the August 31, 2009 deadline.258

Whether the Department of Interior can unilaterally grant gaming rights to a tribe without the state’s consent is an issue which has not been resolved in Florida.259 Despite the Department of the Interior successfully having procedures passed that allow the unilateral granting of gaming rights to a tribe, the validity of this power remains unclear.260 However, because of the great loss a state could suffer, threats from the Department of the Interior should be taken seriously.261 Similar to the previous compact, threats have

251. See Eidson, supra note 147, at 328; Lent, supra note 144, at 469.
252. SB 788 Staff Analysis, supra note 218, at 5.
253. See id.
254. See Eidson, supra note 147, at 328.
255. See SB 788 Staff Analysis, supra note 218, at 5.
256. Kam, Gaming Deal, supra note 4.
257. Id.
258. See id.
259. See SB 788 Staff Analysis, supra note 217, at 8–9.
260. See generally Texas v. United States, 497 F.3d 491 (5th Cir. 2007).
261. See Cohen, supra note 167, at 301.
been made regarding the completion of Senate Bill 788.262 Once again, while trying to negotiate the compact, Governor Crist is simultaneously being told by the Department of the Interior that the state’s failure to act would result in the federal government granting the Seminole Tribe gaming rights.263 Reminiscent of the prior compact, it appears Governor Crist will be forced to make “a ‘battlefield decision’ by negotiating the compact, knowing that if he” does not act, the United States Department of Interior may allow Class III gaming “at the tribal casinos anyway and Florida [will not get] a dime from the deal.”264

V. CONCLUSION

When Senate Bill 788 was first signed in May 8, 2009, it appeared as though the Seminole Tribe’s seventeen years of negotiation attempts would finally be successful. However, with less than a month before the August 31, 2009 deadline, it seems the State of Florida and the Seminole Tribe will be unable to satisfy the complex compact process. The Florida Legislature clearly drafted Senate Bill 788 to account for the failures of the previous compact as addressed by the Supreme Court of Florida.265 However, the Florida Legislature overlooked the significance of the substantial exclusivity requirement imposed by the Department of the Interior. Considering the potential for a loss of billions of dollars that could benefit the Educational Enhancement Trust Fund of Florida, both Governor Crist and the Florida Legislature should plan accordingly. Although this may require offering more gaming rights to the Seminole Tribe, giving the Department of the Interior the chance to unilaterally issue procedures may be too much of a gamble.

262. Kam, Gaming Deal, supra note 4.
263. See id.
265. See Fla. House of Representatives v. Crist, 999 So. 2d 601, 616 (Fla. 2008).