

# HOUSE BILL REPORT

## SSB 5905

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### As Reported by House Committee On:

Commerce & Labor

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

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

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

### Brief History:

#### Committee Activity:

Commerce & Labor: 3/28/01, 3/30/01 [DPA].

#### Brief Summary of Substitute Bill (As Amended by House Committee)

- Until July 30, 2007, the state consents to federal court jurisdiction over disputes arising under the Indian Gaming Regulatory Act (IGRA) or under a state/tribal compact adopted under IGRA.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hunt, Kenney, Lisk and McMorris.

**Staff:** Sydney Forrester (786-7120).

### Background:

The Indian Gaming Regulatory Act (IGRA) enacted by Congress in 1988, governs gambling on Indian lands. Under IGRA, tribes may not conduct class III gambling on Indian lands unless a state/tribal compact governs the specific form of gambling. Class

III gaming typically includes banked card games, slot machines, pari-mutual racing, lotteries, and electronic games of chance. The state regulates class III gaming under the terms of state/tribal gaming compacts.

A tribe wanting to conduct class III gaming must request the state to negotiate a compact. The IGRA requires the state to negotiate in good faith. If the state refuses to negotiate, or if the tribe alleges the state is not negotiating in good faith, IGRA authorizes the tribe to sue the state in federal court. In 1996 the United States Supreme Court ruled this provision violates the 11th Amendment of the Constitution. Based on that ruling, if a state asserts its 11th Amendment sovereign immunity defense, this portion of IGRA is rendered inoperable.

In Washington 24 state/tribal compacts have been approved. Fourteen compacting tribes operate casino facilities, and three tribes operate casinos without a state/tribal compact.

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**Summary of Amended Bill:**

The state consents to federal court jurisdiction in actions filed on or before July 29, 2007, and brought by a compacting tribe to settle a dispute arising under the Indian Gaming Regulatory Act or under a tribal/state compact. The state's waiver of sovereign immunity expires July 30, 2007, and is conditioned upon the tribe having a tribal/state compact, and upon a similar waiver of sovereign immunity by the tribe bringing suit.

**Amended Bill Compared to Substitute Bill:**

The amended bill provides an expiration date for the state's consent to federal court jurisdiction over disputes arising under the Indian Gaming Regulatory Act or under a state/tribal compact. Additional language clarifies that the state's limited waiver of sovereign immunity extends only to suits properly filed before the expiration date.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** (In support of substitute and original bill) The Gambling Commission believes this legislation would help move forward in resolving disputes with tribes. Dispute resolution under IGRA and the tribal/state compacts has been a somewhat difficult issue. The IGRA was enacted to address tribal/state regulation of gambling, including disputes between state and tribe. Some issues are still in dispute even with

compacting tribes, and three tribes are operating casinos without a compact. This means the U. S. Attorneys and the federal courts are the only ones who can enforce IGRA with the non-compacting tribes. Results have not been very favorable because of inaction or action drawing out for a long time.

The Yakima Nation, S'Klallam Swinomish Tribe, and Jamestown Tribes support both bills and are neutral on an amendment adding an expiration date. The tribes believe the original bill is more fair and gives a more definite course of dispute resolution. The tribes believe that federal court is the proper court because IGRA is federal law. The Muckleshoot Tribe supports both bills and would support an amendment adding an expiration date. The tribe urges one version of the bill be moved to make the compacts enforceable. Other states have waived sovereign immunity for purposes of gaming.

(In support of original bill): The Washington Indian Gaming Association supports the original version of the bill because it believes the original version will bring all tribes into compacts. The Spokane Tribe supports the original bill which would include the non-compacted tribes. The tribe has been in gaming since 1994 and has tried several times to negotiate a compact but has been unsuccessful. The tribe pursued the IGRA remedy but was stopped short because the state asserted its 11th Amendment immunity. The tribe has continued gaming even without a compact under federal mediation and a court decision. The tribe will have to go to federal court to determine Washington law on gaming and the state of Washington will not have a seat in that court room. The tribe supports an amendment adding an expiration date to the original bill. The Colville Tribe finds the substitute bill unacceptable; the tribe supports the original bill. The tribe does not believe the legislation would derail the negotiation process currently under way with the state. The original bill allows the tribe to use the court as part of the dispute resolution process and puts the state and tribe on common ground by removing roadblocks to the compact negotiation process.

(With concerns on substitute bill): The Shoalwater Tribe supports the original bill but does not support the substitute bill and would not support an expiration date because non-compacting tribes and newly recognized tribes would be excluded.

**Testimony Against:** None.

**Testified:** Scott Crowell and Greg Abrahamson, Spokane Tribe; Mike Moray and Steve Wehrly, Muckleshoot Tribe; Ed Fleisher, Gambling Commission; D. R. Michel, Colville Tribe; Dawn Vyvyan, Yakama Nation, Jamestown, and S'Klallam Swinomish Tribes; and Diane Nelson, Shoalwater Tribe.