

Date of Hearing: September 8, 1999

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

SCA 11 (Burton) – As Amended: September 8, 1999

Policy Committee:	Elections	Vote:	5-2
	Governmental Organization		18-0

Urgency: No State Mandated Local Program: No Reimbursable:

SUMMARY:

This bill proposes to amend the constitution to allow slot machines, lottery games, and banking card games on Indian tribal lands, subject to compacts negotiated between the governor and the tribes and ratified by the Legislature.

FISCAL EFFECT:

- 1) General Fund costs of about \$200,000 to include an analysis of the measure and arguments for and against the measure in the voter pamphlet.
- 2) Increase in state and local government revenues to the extent that any expansion in gambling operations represents spending that is not diverted from other activities within the state and that otherwise would have occurred on gambling outside of California (such as in Nevada).

COMMENTS:

- 1) Background and Purpose. Last month the state Supreme Court invalidated Proposition 5, a statutory initiative approved by the voters in November 1998 that permitted gaming on California Indian lands. The court determined that the proposition violated the state constitution's prohibition on operating casinos of the type currently operated in Nevada and New Jersey. In anticipation of Proposition 5, being invalidated, Indian tribes have been circulating an initiative petition to reenact the provisions of Proposition 5 as a constitutional amendment. Signatures are to be submitted starting September 14, 1999 and the initiative will appear on the March 2000 statewide primary ballot if it qualifies.

The governor and the tribes have been seeking a legislative solution to avoid the shutting down of Indian casinos following the court's action. The concept is to submit this legislative measure to the voters for their approval at the March 2000 primary to authorize Indian gaming, of the type permitted by Proposition 5, in the state constitution. According to the author's office, the language of this measure was approved by a vote of 32-1 by the Indian tribes negotiating with the governor.

- 2) Amendment. The author requests the following technical amendment to authorize the operation of percentage card games in addition to banking card games.

On page 2, line 29 and on page 3, line 3, after "banking" insert "and percentage".

Analysis Prepared by: Chuck Nicol / APPR. / (916)319-2081

Date of Hearing: September 8, 1999

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Herb Wesson, Chair
SCA 11 (Burton and Villaraigosa) – As Amended: September 7, 1999

SENATE VOTE: 31-3

SUBJECT: Indian Gaming

SUMMARY: Constitutional amendment to authorize the Governor to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking card games by federally recognized Indian tribes on Indian lands in California. Specifically, this bill:

Amends Article IV, Section 19 of the State Constitution by adding the following subsection:

(f) Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

EXISTING LAW:

The State Constitution, Article IV, Section 19, provides:

- (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.
- (b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.
- (c) Notwithstanding subdivision (a) the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.
- (d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.
- (e) The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.

FISCAL EFFECT: None

COMMENTS:

1. Federal Law, the Indian Gaming Regulatory Act (IGRA), governs gambling operations on Indian land by placing gambling activities into three classes and imposing restrictions on Indian tribes who want to conduct these activities. In general, Indian tribes may offer:

- Class I gambling without restriction. Class I gambling includes social games and traditional/ceremonial games.
- Class II gambling is allowed within Indian reservations and is subject to tribal oversight. Class II gambling includes bingo and all card games that are either explicitly authorized by the laws of the state where the tribe is located, or those card games that are not explicitly prohibited by state law and are played at any location in the state. IGRA excludes from the definition of what constitutes Class II gambling all card games in which the operator has a stake (banked) in the amount wagered or the outcome of the game, and electronic games of chance or slot machines.
- Class III gambling activities only if the tribe and the state sign an agreement (referred to as a tribal-state compact) that allows the specific gambling activities. Class III gambling consists of all activities that are not defined as Class I or II gambling. Class III gaming activities may be legally conducted on Indian lands if the tribe is located in a state that permits such gaming for any purpose by any person, organization, or entity. Class III gambling includes lotteries, slot machines or other gambling devices, and horse race wagering. If the state allows any type of Class III gambling and an Indian tribe asks to negotiate a compact for operation of those gambling activities on tribal land, then the state is required to negotiate in good faith for a compact.

Currently, there are 41 Indian gambling operations in California that offer a variety of gambling activities. These include bingo, card games (including a type of blackjack), and electronic (video) gambling devices. To date, California has entered into compacts with four Indian tribes allowing parimutuel wagering on horse racing. In addition, Governor Wilson negotiated a compact with the Pala Band of Mission Indians for other forms of Class III gambling (10 other tribes have also agreed to this compact). Legislation ratifying this agreement was signed into law in 1998 but has been stayed subject to a referendum qualified for the March 7, 2000, statewide primary election.

2. Proposition 5 and the California Supreme Court's decision in *Hotel Employees & Restaurant Employees International Union v. Davis and Cortez v. Davis*. On August 23, 1999, the California Supreme Court ruled that Proposition 5, the Tribal Government and Self Sufficiency Act of 1998, was unconstitutional. Proposition 5 contained a framework regarding terms for a model tribal-state compact that would have been available to all federally recognized tribes in California, and would have authorized Class III gambling on Indian lands in California pursuant to federal law. The proposition would have allowed signatory tribes to offer gaming terminals (provided they were operated using a player' pool prize system, as defined), any card games that were actually played in a tribal gaming facility prior to January 1, 1998 (again using a players' pool prize system), any lottery-based game, and off-track wagering (based on the terms of previous tribal-state compacts on this subject). The court concluded that the terms of the proposition were in conflict with the anti-casino provisions of Section 19 (e) of the State constitution, and entry into the model compacts contained within proposition 5 was beyond the legislative power under the law of California.

REGISTERED SUPPORT / OPPOSITION:

Support

None registered

Opposition

None registered

Analysis Prepared by: George Wiley / G. O. / (916) 319-2531

51615

09/08/99 6:16 PM
RN9923126 PAGE 1
Substantive

AMENDMENTS TO SENATE CONSTITUTIONAL AMENDMENT NO.

11

AS AMENDED IN ASSEMBLY SEPTEMBER 8, 1999

Amendment 1

On page 2, line 29, after "banking" insert:

and percentage

Amendment 2

On page 3, line 3, after "banking" insert:

and percentage

- 0 -

C32



**SCA 11 (BURTON AND VILLARAIGOSA)
GAMBLING.**

Version: 9/7/99 Last Amended

Vote: 2/3 Vote (Constitutional Amendment)

None

Permits the Governor to compact with Indian tribes for the use of slot machines and play of banked card games and lottery games on Indian lands. Requires the compacts to be ratified by the Legislature.

Vice-Chair: Brett Granlund

Tax or Fee Increase: No

Amendments proposed at ERCA Committee would also permit the play of percentage games.

Policy Question

Should the Governor be authorized to conclude gaming compacts with federally recognized Indian tribes?

Should slot machines and banked card games be permitted on Indian lands in California?

Summary

1. Authorizes the Governor to negotiate and conclude tribal-state gaming compacts, subject to ratification by the Legislature.
2. Allows the Governor to conclude compacts for the operation of slot machines and for the conduct of lottery games and banking card games by federally recognized Indian tribes on Indian lands in accordance with federal law.
3. Permits expressly, slot machines, lottery games, and banking card games to be conducted on tribal lands subject to compacts.

Support

Cabazon Band of Mission Indians

Opposition

None on file

Arguments In Support of the Bill

This is a means of resolving the longstanding contentious dispute between the gaming Indian tribes and the state. This bill authorizes the Governor to negotiate compacts with the tribes and provides a means of ratifying them. It provides what the people supported by voting for Proposition 5 last year.

Arguments In Opposition to the Bill

This bill would greatly expand gambling in the state by permitting Indian tribes to have slot machines and banked card games, just like the Nevada casinos. The voters have previously told the Legislature that they do not want Nevada style casinos in California. They did not approve them in Proposition 5 which limited the games that could be played.

Fiscal Effect

Election costs of \$400,000 to propose this Constitutional amendment to the people of California; the Secretary of State estimates a cost of \$50,000 per page in the voter pamphlet and an average 6-8 pages per proposition.

No additional direct State costs.

Comments

1. Under current federal law, the Indian Gaming Regulatory Act of 1988 (IGRA), federally recognized Indian tribes may conduct gaming (classified as Class III) on Indian lands on the conditions that that form of gaming is permitted to others in the state and the tribe has entered into a compact with the state to regulate its activities.
2. In 1998 Governor Wilson negotiated and executed compacts with 11 Indian tribes. Several legislators, among other, challenged his authority to do so in Polanco, Battin, et al. v. Wilson. That court ruled that the Governor had no authority to execute the compacts, a necessary prerequisite to their effectiveness, without authorization from the Legislature. That case is not on appeal. In 1998, the Legislature passed SB 287, Chapter 409,

Senate Republican Floor Votes (31-3) 8/23/99

Ayes: All Republicans, Except

Noes: Morrow, Mountjoy, Wright

Abs. / NV: Leslie, Monteith, Poochigian

Assembly Republican Elections Votes (5-1) 9/7/99

Ayes: Battin

Noes: Thompson

Abs. / NV: Olberg

**Assembly Republican Governmental Organization
Votes (0-0) 9/8/99**

Ayes: None

Noes: None

Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/99

Ayes: None

Noes: None

Abs. / NV: None

Assembly Republican Bill Analysis

SCA 11 (Burton and Villaraigosa)

- Statutes of 1998, (SB287) which ratified 11 compacts that Governor Wilson had negotiated and executed between several tribes and the state. Subsequently, the Agua Caliente Band qualified a referendum on that act, which will be held on March 7, 2000, thus SB 287 is suspended.
3. Proposition 5, the Tribal Government and Economic Self-Sufficiency Act of 1998, which passed in 1998 provided for a form of compact and a procedure for its execution. That act has been found of no effect in resolution of Hotel Employees & Restaurant Employees International Union v. Wilson and another case Cortez v. Davis, which were both decided by the

California State Supreme Court. Thus no procedure exists for dealing with India gaming compacts.

4. The author's office has made the assertion that this bill is a necessary part of putting the Indian gaming controversy to rest. The Governor has decided that he will support an expansion of gambling by going beyond the scope of gaming that would have been permitted under Proposition 5. It restricted the type of machines to ones which did not dispense coins or have handles. This measure would allow the voters to expand the games beyond those they approved in Proposition 5.

Policy Consultant: Jack Wells/Mike Petersen 9/8/99

Fiscal Consultant: Moira Traver 9/8/99

AMENDED IN ASSEMBLY SEPTEMBER 8, 1999

Senate Constitutional Amendment No. 11

**Introduced by Senator Burton and Assembly Member
Villaraigosa**

August 23, 1999

Senate Constitutional Amendment No. 11—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 19 of Article IV thereof, relating to gambling.

LEGISLATIVE COUNSELS DIGEST

SCA 11, as amended, Burton. Gambling.

The California Constitution provides that the Legislature has no power to authorize lotteries, and shall prohibit the sale of lottery tickets in the state, but specifically authorizes the establishment of the California State Lottery. The California Constitution provides that the Legislature may provide for the regulation of horse racing and wagering on the results and may authorize cities and counties to provide for bingo games, but only for charitable purposes. The California Constitution also provides that the Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.

~~This measure would make technical, non-substantive changes to these provisions.~~

This measure would provide that, notwithstanding the provisions of the California Constitution prohibiting lotteries and casinos of the type operating in Nevada and New Jersey, the Governor is authorized to negotiate and conclude

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. The measure would also expressly permit slot machines, lottery games, and banking card games to be conducted and operated on tribal lands subject to these compacts.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no—yes.
State-mandated local program: no.

1 Resolved by the Senate, the Assembly concurring. That
2 the Legislature of the State of California at its 1999-2000
3 Regular Session commencing on the seventh day of
4 December 1998, two-thirds of the membership of each
5 house concurring, hereby proposes to the people of the
6 State of California that the Constitution of the State be
7 amended by amending Section 19 to Article IV thereof to
8 read:

9 SEC. 19. (a) The Legislature has no power to
10 authorize lotteries, and shall prohibit the sale of lottery
11 tickets in the State.

12 (b) The Legislature may provide for the regulation of
13 horse races and horse race meetings and—authorize
14 wagering on the results.

15 (c) Notwithstanding subdivision (a) the Legislature
16 by statute may authorize cities and counties to provide for
17 bingo games, but only for charitable purposes.

18 (d) Notwithstanding subdivision (a), there is
19 authorized the establishment of a California State
20 Lottery.

21 (e) The Legislature has no power to authorize, and
22 shall prohibit, casinos of the type currently operating in
23 Nevada and New Jersey.

24 (f) Notwithstanding subdivisions (a) and (e), and any
25 other provision of state law, the Governor is authorized
26 to negotiate and conclude compacts, subject to
27 ratification by the Legislature, for the operation of slot
28 machines and for the conduct of lottery games and
29 banking card games by federally recognized Indian tribes

1 on Indian lands in California in accordance with federal
2 law. Accordingly, slot machines, lottery games, and
3 banking card games are hereby permitted to be
4 conducted and operated on tribal lands subject to those
5 compacts.

and 9/6

and 9/6

*Assembly Appropriations Committee
Suspense File*

LABOR AND PUBLIC EMPLOYMENT

9/8/99 3:05 PM

BILL	AUTHOR	SUBJECT/FISCAL EFFECT	RECOMMENDATION
SB 401	Karnette	<p>Subject: Memoranda of Understanding: Bargaining Units 2,9,10,12 and 13.</p> <p>As proposed to be amended, ratifies the Memoranda of Understanding (MOUs) reached between the Department of Personnel Administration and the following Bargaining Units:</p> <p>BU 2 (Cal. State Attorneys and Administrative Law Judges (ACSA)) BU 9 (Professional Engineers) BU 10 (Professional Scientists) and BUs 12 and 13 (Operating Engineers)</p> <p>The key provisions of the MOUs are as follows:</p> <p>Salary Increase: 4% effective July 1, 1999 and 4% effective September 1, 2000. Retirement: 2% at 55 (from existing 2% at 60) Health Benefit Increase: Varying by BU</p> <p>Each MOU is effective from July 1, 1999 to June 30, 2001.</p> <p>Fiscal Effect: The 1999 salary and benefit increases provided by the MOUs will result in annual GF costs of \$19.7 million and special funds costs of \$51 million, beginning in 1999-2000. The 2000 salary and benefit increases will result in annual GF costs of \$13.6 million and special fund costs of \$36.2 million, beginning in 2000-01. These funds will be appropriated in SB 339 (Burton).</p>	<p>Do pass as amended to reflect the Memoranda of Understanding reached between the Department of Personnel Administration and Bargaining Units 2,9,10,12 and 13.</p>

Assembly Appropriations Committee
 Suspense File

RESOURCES

9/8/99 1:52 PM

BILL	AUTHOR	SUBJECT/FISCAL EFFECT	RECOMMENDATION
SB 1147	Leslie	<p>Subject: Lake Tahoe Environmental Improvement Program Account</p> <p>Diverts, from the GF to a new Lake Tahoe Environmental Improvement Program Account, lease payments made to the state by Tahoe marina owners who use state lands and earmarks these funds to the Lake Tahoe Conservancy for Tahoe-related projects and programs.</p> <p>Fiscal Effect: Annually diverts, from the GF to the new Tahoe Account, \$80,000.</p>	Do pass.



September 7, 1999

The Honorable George Runner
California State Assembly
Capitol Bldg #6027
Sacramento, CA 95814

Fax: (916) 327-1789

Dear Assemblyman Runner:

Re: Senate Constitutional Amendment 11 (Burton-Villaraigosa)

Senate Constitutional Amendment 11 requires that tribes negotiate compacts with the Governor which are then subject to ratification by the Legislature. SCA 11 will allow for the operation of slot machines and the conduct of lottery and banking card games by Indian tribes on Indian lands in California in accordance with federal law. This language addresses the scope of gaming question which the California Supreme Court found unconstitutional in Proposition 5.

The Cabazon tribe is known for its relentless defense of sovereignty and rights. As Cabazon chairman, I promised our members, employees, friends and supporters in California to defend our honor by whatever means.

Most of California's tribes were close to a tentative compromise last week. The compact isn't perfect, but we continue to negotiate and strongly believe a compromise will be struck shortly which is good for the tribes and the State.

The United States Attorney for the Central District will soon close down the operations of tribes in our district if we do not have compacts. In order for those compacts to be official, this constitutional amendment is required.

The Cabazon Band of Mission Indians strongly supports SCA 11 as the fair and equitable resolution of this issue. Please add your voice to those in support of justice and economic self-reliance for California's Native American tribes. **Vote "Yes" for SCA 11** (as currently drafted and attached).

Respectfully,

John A. James
Tribal Chairman

JAJ/sp



SCA 11
Page 1

Date of Hearing: September 7, 1999

ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT
AND CONSTITUTIONAL AMENDMENTS

Edward Vincent, Chair

SCA 11 (Burton) - As Introduced: August 23, 1999

AS PROPOSED TO BE AMENDED IN COMMITTEE - RN9922783

SENATE VOTE: Vote Not Relevant

SUBJECT: Gambling: Indian Gaming Compacts.

SUMMARY: Constitutional amendment authorizes the Governor to enter into compacts with Indian tribes to allow certain forms of gambling on Indian lands in California, subject to ratification of those compacts by the Legislature. Specifically, this bill:

- 1) Authorizes the Governor, notwithstanding specified provisions of the California Constitution, and any other provision of state law, to negotiate and conclude compacts with federally recognized Indian tribes to permit certain forms of gambling on Indian lands in California in accordance with federal law.
- 2) Authorizes the compacts to allow the operation of slot machines, and the conduct of lottery games and banking card games, on California tribal lands subject to approval of the compacts by the Legislature.
- 3) Expressly authorizes slot machines, lottery games, and banking card games only on tribal lands, subject to those compact terms.

EXISTING LAW:

- 1) The California Constitution provides that the Legislature has no power to authorize lotteries, and requires it to prohibit the sale of lottery tickets in California. Authorizes the California State Lottery, notwithstanding this prohibition.

- 2) Authorizes the Legislature to provide for the regulation of horse races and permit wagering thereon.
- 3) Allows the Legislature to allow cities and counties to permit

SCA 11
Page 2

charitable bingo games.

- 4) Provides the Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.

FISCAL EFFECT : Unknown

COMMENTS :

- 1) On August 23, 1999, the California Supreme Court invalidated Proposition 5, a statutory initiative measure approved by the voters at the November 3, 1998 statewide general election. Proposition 5 permitted gaming on California Indian lands subject to specified conditions. The Court ruled that Proposition 5, by allowing games like 21 or blackjack, and slot machine-style video games, permitted the operation of casinos of the type currently operating in Nevada and New Jersey and thereby violated the California Constitution.
- 2) This measure, a constitutional amendment, provides that, notwithstanding prohibitions of the California Constitution, and in state statutes, the Governor may negotiate agreements (compacts) with federally recognized Indian tribes to permit the operation of slot machines and the conduct of lottery games and banking card games on California Indian lands. This measure makes those agreements subject to ratification by the Legislature. Accordingly, this measure expressly permits the operation of slot machines and lottery games, and the conduct of banking card games on tribal lands subject to the terms of the compacts.
- 3) News reports indicate that the Governor and Indian tribes held many meetings and discussions since the Court invalidated

Proposition 5. The Governor and the tribes have been seeking a legislative solution to avoid the shutting down of Indian casinos following the invalidation of Proposition 5. The concept is to submit a legislative measure to the voters for their approval at the March 7, 2000, statewide primary election to validly authorize Indian gaming. This measure would expressly permit the operation of slot machines, and the conduct of lottery games and banking card games on Indian lands in accordance with federal law. This language in effect authorizes gaming on California Indian lands of the type permitted by Proposition 5. According to the author's office,

SCA 11
Page 3

the language was approved by a vote of 32 to 1 by the Indian tribes negotiating with the Governor.

- 4) In anticipation of Proposition 5 being invalidated, Indian tribes have been circulating for signature an initiative petition to reenact Proposition 5 as a constitutional amendment. The initiative would appear on the March 7, 2000, statewide primary ballot if it qualifies. Signatures are to be submitted starting September 14, 1999.
- 5) In order for this measure to appear on the March 7, 2000, statewide primary ballot, it must be adopted by both houses of the Legislature by the end of business of September 9, the currently scheduled start of Interim Recess.

REGISTERED SUPPORT / OPPOSITION :

Support

None on file

Opposition

None one file

Analysis Prepared by: Romulo Lopez / E., R. & C. A. / (916)

9/8/99

Page 4

319-2094

SCA 11
Page 1

Date of Hearing: September 8, 1999

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Herb Wesson, Chair

SCA 11 (Burton and Villaraigosa) - As Amended: September 7,
1999

SENATE VOTE : 31-3

SUBJECT : Indian Gaming

SUMMARY : Constitutional amendment to authorize the Governor to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking card games by federally recognized Indian tribes on Indian lands in California. Specifically, this bill :

Amends Article IV, Section 19 of the State Constitution by adding the following subsection:

(f) Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

EXISTING LAW :

The State Constitution, Article IV, Section 19, provides:

- (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.
- (b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c) Notwithstanding subdivision (a) the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

SCA 11

Page 2

(d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.

(e) The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.

FISCAL EFFECT : None

COMMENTS :

1. Federal Law, the Indian Gaming Regulatory Act (IGRA), governs gambling operations on Indian land by placing gambling activities into three classes and imposing restrictions on Indian tribes who want to conduct these activities. In general, Indian tribes may offer:

- * Class I gambling without restriction. Class I gambling includes social games and traditional/ceremonial games.
- * Class II gambling is allowed within Indian reservations and is subject to tribal oversight. Class II gambling includes bingo and all card games that are either explicitly authorized by the laws of the state where the tribe is located, or those card games that are not explicitly prohibited by state law and are played at any location in the state. IGRA excludes from the definition of what constitutes Class II gambling all card games in which the operator has a stake (banked) in the amount wagered or the outcome of the game, and electronic games of chance or slot machines.
- * Class III gambling activities only if the tribe and the state sign an agreement (referred to as a tribal-state compact) that

allows the specific gambling activities. Class III gambling consists of all activities that are not defined as Class I or II gambling. Class III gaming activities may be legally conducted on Indian lands if the tribe is located in a state that permits such gaming for any purpose by any person, organization, or entity. Class III gambling includes lotteries, slot machines or other gambling devices, and horse race wagering. If the state allows any type of Class III gambling and an Indian tribe asks to negotiate a compact for operation of those gambling activities on tribal land, then the state is required to negotiate in good faith for a

SCA 11
Page 3

compact.

Currently, there are 41 Indian gambling operations in California that offer a variety of gambling activities. These include bingo, card games (including a type of blackjack), and electronic (video) gambling devices. To date, California has entered into compacts with four Indian tribes allowing parimutuel wagering on horse racing. In addition, Governor Wilson negotiated a compact with the Pala Band of Mission Indians for other forms of Class III gambling (10 other tribes have also agreed to this compact). Legislation ratifying this agreement was signed into law in 1998 but has been stayed subject to a referendum qualified for the March 7, 2000, statewide primary election.

2. Proposition 5 and the California Supreme Court's decision in Hotel Employees & Restaurant Employees International Union v. Davis and Cortez v. Davis. . . On August 23, 1999, the California Supreme Court ruled that Proposition 5, the Tribal Government and Self Sufficiency Act of 1998, was unconstitutional. Proposition 5 contained a framework regarding terms for a model tribal-state compact that would have been available to all federally recognized tribes in California, and would have authorized Class III gambling on Indian lands in California pursuant to federal law. The proposition would have allowed signatory tribes to offer gaming terminals (provided they were operated using a player' pool prize system, as defined), any

card games that were actually played in a tribal gaming facility prior to January 1, 1998 (again using a players' pool prize system), any lottery-based game, and off-track wagering (based on the terms of previous tribal-state compacts on this subject).

The court concluded that the terms of the proposition were in conflict with the anti-casino provisions of Section 19 (e) of the State constitution, and entry into the model compacts contained within proposition 5 was beyond the legislative power under the law of California.

REGISTERED SUPPORT / OPPOSITION :

Support

None registered

Opposition

SCA 11
Page 4

None registered

Analysis Prepared by : George Wiley / G. O. / (916) 319-2531

SENATE RULES COMMITTEE	SCA 11
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

THIRD READING

Bill No: SCA 11
 Author: Burton (D)
 Amended: 9/3/99
 Vote: 27

WITHOUT REFERENCE TO COMMITTEE OR FILE

SENATE FLOOR : 39-0, 8/23/99

AYES: Alarcon, Alpert, Baca, Brulte, Burton, Chesbro,
 Costa, Dunn, Escutia, Figueroa, Hayden, Haynes, Hughes,
 Johannessen, Johnson, Johnston, Karnette, Kelley, Knight,
 Leslie, Lewis, McPherson, Monteith, Morrow, Mountjoy,
 Murray, O'Connell, Ortiz, Peace, Perata, Polanco,
 Poochigian, Rainey, Schiff, Sher, Solis, Speier,
 Vasconcellos, Wright

NOT VOTING: Bowen

SUBJECT : Gambling

SOURCE : Author

DIGEST : This constitutional amendment provides that,
 notwithstanding the provisions of the California
 Constitution prohibiting lotteries and casinos of the type
 operating in Nevada and New Jersey, the Governor is
 authorized to negotiate and conclude compacts, subject to

ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. This constitution amendment also expressly permits slot

CONTINUED

SCA 11

Page

2

machines, lottery games, and banking card games to be conducted and operated on tribal lands subject to these compacts.

Senate Floor Amendments of 9/3/99 authorize the Governor to negotiate and conclude a compact, subject to ratification of the Legislature, for the operation of slot machines and banking card games by federally recognized Indian tribes on Indian lands in California as specified.

This amendment is necessary for the tribes to achieve a compact with the State which would allow them to continue to operate the games they are currently conducting.

ANALYSIS : The California Constitution provides that the Legislature has no power to authorize lotteries, and shall prohibit the sale of lottery tickets in the state, but specifically authorizes the establishment of the California State Lottery. The California Constitution provides that the Legislature may provide for the regulation of horse racing and wagering on the results and may authorize cities and counties to provide for bingo games, but only for charitable purposes. The California Constitution also provides that the Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

DLW:sl 9/5/99 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

9/8/99

Page 3

**** END ****

**SCA 11 (BURTON AND VILLARAIGOSA)
GAMBLING.**

Version: 9/7/99 Last Amended

Vote: 2/3 Vote (Constitutional Amendment)

None

Vice-Chair: Brett Granlund

Tax or Fee Increase: No

Permits the Governor to compact with Indian tribes for the use of slot machines and play of banked card games and lottery games on Indian lands. Requires the compacts to be ratified by the Legislature.

Amendments proposed at ERCA Committee would also permit the play of percentage games.

Policy Question

Should the Governor be authorized to conclude gaming compacts with federally recognized Indian tribes?

Should slot machines and banked card games be permitted on Indian lands in California?

Summary

1. Authorizes the Governor to negotiate and conclude tribal-state gaming compacts, subject to ratification by the Legislature.
2. Allows the Governor to conclude compacts for the operation of slot machines and for the conduct of lottery games and banking card games by federally recognized Indian tribes on Indian lands in accordance with federal law.
3. Permits expressly, slot machines, lottery games, and banking card games to be conducted on tribal lands subject to compacts.

Support

Cabazon Band of Mission Indians

Opposition

None on file

Arguments In Support of the Bill

This is a means of resolving the longstanding contentious dispute between the gaming Indian tribes and the state. This bill authorizes the Governor to negotiate compacts with the tribes and provides a means of ratifying them. It provides what the people supported by voting for Proposition 5 last year.

Arguments In Opposition to the Bill

This bill would greatly expand gambling in the state by permitting Indian tribes to have slot machines and banked card games, just like the Nevada casinos. The voters have previously told the Legislature that they do not want Nevada style casinos in California. They did not approve them in Proposition 5 which limited the games that could be played.

Fiscal Effect

Unknown.

Comments

1. Under current federal law, the Indian Gaming Regulatory Act of 1988 (IGRA), federally recognized Indian tribes may conduct gaming (classified as Class III) on Indian lands on the conditions that that form of gaming is permitted to others in the state and the tribe has entered into a compact with the state to regulate its activities.
2. In 1998 Governor Wilson negotiated and executed compacts with 11 Indian tribes. Several legislators, among other, challenged his authority to do so in Polanco, Battin, et al. v. Wilson. That court ruled that the Governor had no authority to execute the compacts, a necessary prerequisite to their effectiveness, without authorization from the Legislature. That case is not on appeal. In 1998, the Legislature passed SB 287, Chapter 409, Statutes of 1998, (SB287) which ratified 11 compacts that Governor Wilson had negotiated and executed between several tribes and the state. Subsequently, the Agua Caliente Band qualified a referendum on that act, which will

Senate Republican Floor Votes (31-3) 8/23/99

Ayes: All Republicans, Except

Noes: Morrow, Mountjoy, Wright

Abs. / NV: Leslie, Monteith, Poochigian

Assembly Republican Elections Votes (5-1) 9/7/99

Ayes: Battin

Noes: Thompson

Abs. / NV: Olberg

Assembly Republican Governmental Organization

Votes (0-0) 9/8/99

Ayes: None

Noes: None

Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/99

Ayes: None

Noes: None

Abs. / NV: None

Assembly Republican Bill Analysis

- be held on March 7, 2000, thus SB 287 is suspended.
3. Proposition 5, the Tribal Government and Economic Self-Sufficiency Act of 1998, which passed in 1998 provided for a form of compact and a procedure for its execution. That act has been found of no effect in resolution of Hotel Employees & Restaurant Employees International Union v. Wilson and another case Cortez v. Davis, which were both decided by the California State Supreme Court. Thus no procedure exists for dealing with India gaming compacts.

SCA 11 (Burton and Villaraigosa)

4. The author's office has made the assertion that this bill is a necessary part of putting the Indian gaming controversy to rest. The Governor has decided that he will support an expansion of gambling by going beyond the scope of gaming that would have been permitted under Proposition 5. It restricted the type of machines to ones which did not dispense coins or have handles. This measure would allow the voters to expand the games beyond those they approved in Proposition 5.

Policy Consultant: Jack Wells/Mike Petersen 9/8/99

Fiscal Consultant:

