

DEPARTMENT OF JUSTICE

HB 132: Delegation of Authority to Negotiate Tribal Gaming Compacts

Background

Montana's Indian Tribes expressed an interest in pursuing legislation related to gaming compacts. In response, the Gaming Advisory Council (GAC) invited tribal representatives to address its December 2003 meeting. As a result of that testimony, the GAC appointed a subcommittee that held three additional meetings around the state. The subcommittee met with the Tribes to gather further information and to discuss policy options related to negotiating gaming compacts.

The main issues identified are:

- The Tribes believe that the executive branch has not been willing to negotiate in a way that recognizes the sovereignty of each tribe and the goals of the Indian Gaming Regulatory Act (IGRA).
- The Tribes have indicated that the restrictions imposed by existing compacts limit potential development that could improve economic and social conditions on Montana's reservations.
- Both tribal and state negotiators believe negotiations are hampered by not having a clear definition of which issues the governor can negotiate and which require legislative approval.

The Federal Indian Gaming Regulatory Act

The Indian Gaming Regulatory Act (IGRA) authorizes shared jurisdiction over class III gaming. Class III gaming includes most casino-type gambling and video gambling machines. Under the federal law, tribes cannot conduct gambling activities that are not allowed by state law. IGRA requires the state to negotiate and specifies that the goal of negotiation is economic development of the tribe.

The Delegation Issue in Other States

The lack of clear delegation of authority by the legislature has been raised in litigation in state courts in several other states, most notably New Mexico and New York.

Other western states either specifically delegate authority to the governor or require that the legislature ratify compacts, or both. All states place the responsibility for the negotiation and execution of compacts with the governor. States have a variety of schemes for the governor to either consult with the legislature, provide notice to the legislature or report to the legislature on compact negotiations. For example, Idaho allows the governor to negotiate on gaming allowed under state law, but anything that is not allowed by state law must be approved by the legislature. In most cases, it appears that the legislature cannot amend a proposed compact; it can only vote to accept or reject what the governor has negotiated.

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Proposal to Clarify Montana's Negotiation Process

HB 132 codifies the general practice and procedure used for negotiations in Montana over the past few years. The proposed legislation also echoes federal law in an effort to minimize potential litigation caused by conflicts between state and federal law.

HB 132 defines:

- **Permitted gaming** – outlines gambling activities that are generally legal in the state; cannot be negotiated without the agreement of the legislature
- **Conditions of play** – outlines how a gambling activity is played, such as payout limits and numbers of machines; can be negotiated by the governor or a state negotiating team

The legislation also:

- requires that the legislature must be notified of any negotiations
- grants the governor discretion to negotiate conditions of play limited by criteria that reflect IGRA's goals. These criteria include economic benefits to the tribe, strengthening tribal government and keeping out corrupting influences.

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