

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: 06/18/99

Received By: isagerro

Wanted: Soon

Identical to LRB:

For: Assembly Republican Caucus

By/Representing: Hartsough

This file may be shown to any legislator: NO

Drafter: isagerro

May Contact:

Alt. Drafters:

Subject: **Gambling - miscellaneous**

Extra Copies:

Pre Topic:

ARC:.....Hartsough - Am # 43,

Topic:

Legislative approval of gaming compacts

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------------|---------------------|---------------------|----------------|--------------------------|-----------------|-----------------|
| /1 | isagerro 06/22/99 | ygeller 06/23/99 | martykr 06/23/99 | _____ | lrb_docadmin 06/23/99 | | |

FE Sent For:

<END>

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|--------------|----------------|-----------------|--------------|------------------|------------------|-----------------|-----------------|
| /? | isagerro | 1/6/23 Jg | 1/6/23 Jm | DS 6/23 Am 23 | | | |

FE Sent For:

<END>

To Be Drafted

Agency DOA

Amendment# 43

ARC Analyst Melanie Hartsough

LRB#

Tax Cut

Summary

Under current law, the governor, on behalf of the state, is authorized to negotiate and enter into Indian gaming compacts. These compacts are regulated by the federal Indian Gaming Regulatory Act.

The amendment provides that, before entering into any Indian gaming compact that has been negotiated, the governor is required to submit the proposed compact to each house of the legislature for approval. The governor may not enter into any compact until each house of the legislature, by a majority vote of those members present and voting, has approved the proposed compact in its entirety. In addition, require that any new casinos sited in Wisconsin must be approved by the Legislature.

6/21 Conversation w/ Brian Date
- approve by jt Resolution

Fiscal Impact

None.

Statement of Intent

Administration. Provides that, before entering into any Indian gaming compact that has been negotiated, the governor be required to submit the proposed compact to each house of the legislature for approval. The governor may not enter into any compact until each house of the legislature, by a majority vote of those members present and voting, has approved the proposed compact in its entirety.

jt resolution

Request# 247

Friday, June 18, 1999



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0706/1

ISR:.....

↑
jg

ARC:.....Hartsough - Am # 43, Legislative approval of gaming compacts

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

Done
soon

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 20, line 10: after that line insert:

3 "SECTION 7m. 14.035 of the statutes is renumbered 14.035 (1) and amended to
4 read: NO CAPS SMALL

5 14.035 (1) The Subject to sub. (2), the governor may, on behalf of this state,
6 enter into any compact that has been negotiated under 25 USC 2710 (d).

7 History: 1989 a. 196. SECTION 7n. 14.035 (2) of the statutes is created to read:

8 14.035 (2) Before entering into any compact negotiated under sub. (1), the
9 governor shall submit the proposed compact to the legislature for approval. The
10 governor may not enter into any compact until the legislature approves the compact

1 by joint resolution. If the legislature does not approve without change the proposed
2 compact, the proposed compact shall be returned to the governor for renegotiation.

3 SECTION 7q. 14.037^X of the statutes is created to read:

4 **14.037 Indian gaming on lands taken into trust after October 17, 1988.**

5 The governor may not concur with the determination of the U.S. secretary of the
6 interior, as described in 25 USC 2719 (b) (1) (A), that a gaming establishment
7 proposed to be located on lands acquired by the U.S. secretary of the interior in trust
8 for the benefit of an Indian tribe after October 17, 1988, would not be detrimental to
9 the surrounding community unless the legislature approves the proposed gaming
10 establishment by joint resolution.”.

11 2. Page 1585, line 1: after that line insert:

12 initial
app “(1m)^d LEGISLATIVE APPROVAL OF INDIAN GAMING COMPACTS AND PROPOSED INDIAN
13 GAMING ESTABLISHMENTS. The treatment of sections ~~14.035~~ and 14.037 of the statutes
14 first ^{apply} applies to gaming compacts negotiated by the governor and decisions made by
15 the governor as described under 25 USC 2719 (1) (A) beginning on the effective date
16 of this subsection.”

17 (END)

the renumbering and amendment of ^{section} 14.035 of the
statutes and the creation of section 14.035(2)
of the statutes

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0706/1dn

ISR:.....

↑
JLg

June 22, 1999

Brian Dake:

Please review this amendment carefully to make sure it achieves your intent. In particular, please note the following:

1. As we discussed, this amendment requires the legislature to approve a proposed compact or proposed gaming establishment by joint resolution. A court could find this amendment unconstitutional as a violation of the separation of powers because this amendment allows the legislature to "veto" by joint resolution a compact negotiated by the governor. See *INS v. Chadha*, 462 U.S. 919 (1982); *Martinez v. DILHR*, 160 Wis. 2d 272 (1990).

2. Under this amendment, if the legislature does not fully approve a compact, the compact must be renegotiated and resubmitted. Is this your intent?

3. The drafting instructions state that the amendment requires ^{that} any new casinos sited in Wisconsin must be approved by the legislature. Under federal law and current Indian gaming compacts negotiated by the governor, any new casino proposed to be located on land acquired by an Indian tribe prior to October 17, 1988, must be authorized in a gaming compact. Because the legislature must approve all gaming compacts and any new casino proposed by a tribe must be included in a compact, it is not necessary to specifically state that the legislature must approve any new casino proposed to be located on Indian lands acquired by a tribe prior to October 17, 1999.

4. A casino proposed to be located on Indian lands taken into trust by the U.S. secretary of the interior for the benefit of an Indian tribe after October 17, 1988, must be authorized by the U.S. secretary of the interior and agreed to by the governor. Authorization by a gaming compact is not necessary. This amendment prohibits the governor from allowing a tribal gaming establishment to be located on Indian lands unless the legislature approves the gaming establishment by joint resolution. Because *federal law* authorizes the governor to concur with a decision of the U.S. secretary of the interior, this amendment raises the issue of whether a state legislature may impose restrictions on the governor's ability to concur. As the courts have not yet dealt with this issue, the outcome of a legal challenge to this amendment is unclear.

If you have any questions or comments, please feel free to contact me.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: Ivy.Sager-Rosenthal@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0706/1dn
ISR:jlg:km

June 23, 1999

Brian Dake:

Please review this amendment carefully to make sure it achieves your intent. In particular, please note the following:

1. As we discussed, this amendment requires the legislature to approve a proposed compact or proposed gaming establishment by joint resolution. A court could find this amendment unconstitutional as a violation of the separation of powers because this amendment allows the legislature to "veto" by joint resolution a compact negotiated by the governor. See *INS v. Chadha*, 462 U.S. 919 (1982); *Martinez v. DILHR*, 160 Wis. 2d 272 (1990).

2. Under this amendment, if the legislature does not fully approve a compact, the compact must be renegotiated and resubmitted. Is this your intent?

3. The drafting instructions state that the amendment requires that any new casinos sited in Wisconsin must be approved by the legislature. Under federal law and current Indian gaming compacts negotiated by the governor, any new casino proposed to be located on land acquired by an Indian tribe prior to October 17, 1988, must be authorized in a gaming compact. Because the legislature must approve all gaming compacts and any new casino proposed by a tribe must be included in a compact, it is not necessary to specifically state that the legislature must approve any new casino proposed to be located on Indian lands acquired by a tribe prior to October 17, 1999.

4. A casino proposed to be located on Indian lands taken into trust by the U.S. secretary of the interior for the benefit of an Indian tribe after October 17, 1988, must be authorized by the U.S. secretary of the interior and agreed to by the governor. Authorization by a gaming compact is not necessary. This amendment prohibits the governor from allowing a tribal gaming establishment to be located on Indian lands unless the legislature approves the gaming establishment by joint resolution. Because *federal law* authorizes the governor to concur with a decision of the U.S. secretary of the interior, this amendment raises the issue of whether a state legislature may impose restrictions on the governor's ability to concur. As the courts have not yet dealt with this issue, the outcome of a legal challenge to this amendment is unclear.

If you have any questions or comments, please feel free to contact me.

Ivy G. Sager-Rosenthal
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State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0706/1
ISR:jlq:km

ARC:.....Hartsough – Am # 43, Legislative approval of gaming compacts

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 20, line 10: after that line insert:

3 “SECTION 7m. 14.035 of the statutes is renumbered 14.035 (1) and amended to
4 read:

5 14.035 (1) ~~The Subject to sub. (2),~~ the governor may, on behalf of this state,
6 enter into any compact that has been negotiated under 25 USC 2710 (d).

7 SECTION 7n. 14.035 (2) of the statutes is created to read:

8 14.035 (2) Before entering into any compact negotiated under sub. (1), the
9 governor shall submit the proposed compact to the legislature for approval. The
10 governor may not enter into any compact until the legislature approves the compact

1 by joint resolution. If the legislature does not approve without change the proposed
2 compact, the proposed compact shall be returned to the governor for renegotiation.

3 **SECTION 7q.** 14.037 of the statutes is created to read:

4 **14.037 Indian gaming on lands taken into trust after October 17, 1988.**

5 The governor may not concur with the determination of the U.S. secretary of the
6 interior, as described in 25 USC 2719 (b) (1) (A), that a gaming establishment
7 proposed to be located on lands acquired by the U.S. secretary of the interior in trust
8 for the benefit of an Indian tribe after October 17, 1988, would not be detrimental to
9 the surrounding community unless the legislature approves the proposed gaming
10 establishment by joint resolution.”.

11 **2.** Page 1585, line 1: after that line insert:

12 “(1d) LEGISLATIVE APPROVAL OF INDIAN GAMING COMPACTS AND PROPOSED INDIAN
13 GAMING ESTABLISHMENTS. The treatment of section 14.037 of the statutes, the
14 renumbering and amendment of section 14.035 of the statutes and the creation of
15 section 14.035 (2) of the statutes first apply to gaming compacts negotiated by the
16 governor and decisions made by the governor as described under 25 USC 2719 (1) (A)
17 beginning on the effective date of this subsection.”.

18 (END)