

SR-11, As Adopted by Senate, February 11, 2009

Senator Thomas offered the following resolution:

Senate Resolution No. 11.

A resolution maximizing the state's ability to affect the terms and conditions of gaming operations under federal law by concurring in the tribal-state gaming compact negotiated between the Governor and the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan (the Gun Lake Band) and the state of Michigan and executed on May 9, 2007.

Whereas, The United States Congress enacted the Indian Gaming Regulatory Act of 1988 (IGRA) to provide a statutory framework for the establishment of regulatory roles for the states, the federal government, and Indian tribes in tribal Class III gaming operations; and

Whereas, Federally recognized Indian tribes have a right under this federal law to operate gaming as a means of economic development within states that allow such gaming for any purpose by any person, organization, or entity. The state of Michigan permits Class III gaming to be operated by non-tribal entities under the Michigan Gaming Control and Revenue Act; and

Whereas, Under federal law, states have limited ability to affect the terms and conditions of tribal Class III gaming by entering into a compact between the state and a federally recognized Indian tribe; and

Whereas, The state of Michigan has entered into tribal-state gaming compacts with 11 of Michigan's 12 federally recognized Indian tribes; the only federally recognized Indian tribe not having a compact being the Gun Lake Band. The Michigan Legislature has approved all 11 tribal-state gaming compacts by resolution. The Michigan Supreme Court has held that the Michigan Legislature has the authority to approve tribal-state gaming compacts by legislative resolution; and

Whereas, The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan, which is also known as the Gun Lake Band, became a federally recognized Indian tribe in 1998; and

Whereas, A new tribal-state gaming compact between the state of Michigan and the Gun Lake Band (the "Gun Lake Compact") has been negotiated by the Governor and the Gun Lake Band and signed on May 9, 2007. This compact has been filed with the Secretary of the Michigan Senate and is available for review. The Gun Lake Compact contains terms and conditions more beneficial to the state of Michigan than the previous 11 compacts; and

Whereas, The Gun Lake Compact contains additional and substantial regulatory provisions governing the Gun Lake Band's proposed gaming facility that are not contained in any of the 11 other tribal-state gaming compacts; and

Whereas, The Gun Lake Compact prohibits the sale of tobacco to minors at the Gun Lake Band's proposed gaming facility; and

Whereas, The Gun Lake Compact provides that persons under 21 years of age may not participate in gaming at the Gun Lake Band's proposed gaming facility; and

Whereas, The Gun Lake Compact provides additional safeguards for revenue payments to the state of Michigan when compared to the prior 11 Class III gaming compacts; and

Whereas, The Gun Lake Compact contains a potential for substantially increased revenue sharing with the state of Michigan when compared to the prior 11 compacts. It also contains a minimum of a 50 percent increase over the prior 11 compacts for payments to the state of Michigan as reimbursement for regulatory costs; and

Whereas, The Gun Lake Compact also contains terms and conditions more beneficial to the state than the March 2008 settlement between the Governor and the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians regarding the tribes' Club Keno lawsuit that challenged their obligation to pay a portion of their tribal casino revenue to the Michigan Strategic Fund; and

Whereas, The Secretary of the United States Department of the Interior has issued procedures for the operation of Class III gaming by Indian tribes that permit said tribes to operate Class III gaming facilities in the absence of a tribal-state compact where states have failed to enter into a compact with such tribes; and

Whereas, In the case of *Michigan Gambling Opposition v. United States Department of Interior, et al*, Case No. 07-5092, the United States Court of Appeals for the District of Columbia Circuit ruled in favor of the Gun Lake Band on April 29, 2008, on the issue of the Secretary of the Interior taking land into trust for the tribe for the purpose of conducting Class III gaming. On January 21, 2009, the United States Supreme Court denied a writ of certiorari, thereby ending further appellate action in this case. Other actions may occur regarding this issue, and the Senate takes no position regarding these matters. Approving this resolution neither condones nor encourages the expansion of casino gaming; and

Whereas, On January 30, 2009, the United States Secretary of the Interior acquired title to approximately 147 acres of land in Wayland Township, taking it into trust for the benefit of the Gun Lake Band; and

Whereas, Because the Secretary's decision to take the land into trust is not subject to further legal challenge, it appears that Class II gaming by the Gun Lake Band on the trust property is inevitable, with or without a gaming compact; and

Whereas, In order to preserve the favorable terms of the current compact negotiated with the Gun Lake Band and to avoid showing a lack of good faith in negotiations, it is in the state's best interest to approve the tribe's request for Class III gaming; now, therefore, be it

Resolved by the Senate, That we affirm the state's ability to impact the terms and conditions of Indian gaming under federal law by concurring in a tribal-state compact; and be it further

Resolved, That pursuant to requirements of the IGRA and pursuant to section 10 of the proposed compact, we concur in the tribal-state gaming compact signed on May 9, 2007, by the Governor and the chairperson of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan (the Gun Lake Band) and on file with the Secretary of the Senate, providing for and governing the conduct of tribal Class III gaming by the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan (the Gun Lake Band); and be it further

Resolved, That copies of this resolution be transmitted to the Governor, representatives of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan, and the United States Secretary of the Interior.