

Revenue Estimating Conference
Indian Gaming Revenues
Supplement: Background Information
February 20, 2024

Development of 2021 Compact...

The Governor and the Seminole Tribe of Florida signed the current Compact on April 23, 2021, with an amendment on May 17, 2021. It was subsequently ratified in Special Session as part of Chapter 2021-268, L.O.F. (CS/SB 2-A), which was approved by the Governor on May 25, 2021. Part of the approved amendment addressed the initiation of sports betting no earlier than October 15, 2021.

Intended Operation of 2021 Compact...

The legislation required that, “Upon receipt of an act ratifying a tribal-state compact, the Secretary of State shall coordinate with the parties to the compact to formally submit a copy of the executed compact and the ratifying act to the United States Secretary of the Interior for his or her review and approval, in accordance with 25 U.S.C. s. 2710(d)(8).” On August 11, 2021, the Department of Interior, Bureau of Indian Affairs, published a notice entitled “Indian Gaming; Approval by Operation of Law of Tribal-State Class III Gaming Compact in the State of Florida” in the Federal Register. This notice officially triggered the first revenue sharing cycle to begin on September 1, 2021. By operation, the 2010 Compact was superseded when the 2021 Compact became effective.

In addition to the previously authorized games, the 2021 Compact authorizes craps & roulette, sports betting, and fantasy sports contests. It also establishes a new bracket structure based on the different components of Net Win: Slot Machines, Raffles and Drawings + New Games; Table Games (including craps & roulette); Sports Betting – Tribe (direct); and Sports Betting – Qualified Pari-mutuel Permitholders. Further, the 2021 Compact includes a schedule of guaranteed minimum payments that apply to the first five revenue sharing cycles. The guarantees are:

- At least \$400 million for any revenue sharing cycle during the first five years of the Compact.
- At least \$1.5 billion by the end of the third revenue sharing cycle with the payment due within 30 calendar days after the end of the third cycle; and
- At least \$2.5 billion by the end of the fifth revenue sharing cycle with the payment due within 30 calendar days after the end of the fifth cycle.

For this purpose, the intended end of the third revenue sharing cycle would be August 31, 2024, and the intended end of the fifth revenue sharing cycle would be August 31, 2026. There are, however, certain events which affect these calculations. Overall, the Tribe's obligation to make the Guaranteed Minimum Compact Term Payment ceases (i) if the State violates the Tribe's exclusivity and the State fails to cure such violation within 180 days after notice of such breach by the Tribe, or (ii) if the Tribe's authorization to conduct the Covered Games is invalidated, in whole or in part, as a result of a court decision; provided, if at any time the Tribe is not legally permitted to offer Sports Betting as described in the 2021 Compact, including to patrons physically located in the State but not on Indian Lands, or the Tribe loses the exclusive right to offer Sports Betting, then the Tribe's obligation to pay the full Guaranteed Minimum Compact Term Payment and the other minimum payments shall be reduced by ten (10) percent.

Finally, the 2021 Compact addresses the submission of monthly payments by requiring a total estimate for the 12-month revenue sharing cycle, with the monthly payments based on that. It specifically defines the “monthly payment” as “eight and one-third percent (8.333%) of the estimated Revenue Share Payment to be paid by the Tribe during such Revenue Sharing Cycle.” This is an important feature because the various payment brackets operate off the total for the year.

Interplay with Lawsuits...

The State of Florida began receiving Indian Gaming payments under the 2021 Compact in October of 2021. While the Seminole Tribe of Florida had previously elected to continue revenue sharing with the State of Florida after the U.S. District Court for the District of Columbia set aside federal approval of the 2021 Compact on November 22, 2021, the Tribe discontinued all payments after making its monthly payment in February 2022 for January 2022 activity.¹ Between October 2021 and February 2022, the state received 5 payments of \$37.5 million each, totaling \$187.5 million.

Today, the legal case is still ongoing. On June 30, 2023, the United States Court of Appeals, D.C. Circuit, vacated the District Court’s opinion, and directed it to enter judgment for the Secretary of the Department of Interior.² The Plaintiffs then filed a petition for a rehearing *en banc* of the panel opinion, which was denied on September 11, 2023. Subsequent to the appellate court’s denial of the Plaintiffs’ request for a stay of the mandate, pending appeal, on September 28, 2023, the Chief Justice of the U.S. Supreme Court denied a separate application from the Plaintiffs for a stay on October 25, 2023.

After a soft opening on November 7, 2023, to test its sports betting platform, the Tribe formally launched the statewide reactivation of its sports betting program on December 7, 2023, as well as the newly authorized games of craps and roulette. A revenue share payment was received in January 2024 for December activity, and a subsequent payment was received in February for January activity.³

On February 8, 2024, the Plaintiffs filed a petition for Writ of Certiorari with the U.S. Supreme Court, formally asking it to take up the case. At the same time, a separate case is being reviewed by the Florida Supreme Court. The Plaintiffs’ petition for Writ of Quo Warranto was filed on September 26, 2023, but the Florida Supreme Court has not yet acted on the petition.⁴

¹ See *W. Flagler Assocs. v. Haaland*, 573 F. Supp. 3d 260 (D.D.C. 2021). After initially launching November 1, 2021, the Tribe discontinued all sports betting activity on December 4, 2021. This was one day after the U.S. District of Columbia appellate court rejected a request from the Tribe to continue operations while the decision issued November 22, 2021, was appealed.

² See *W. Flagler Assocs. v. Haaland*, No. 21-5265 (D.C. Cir. 2023).

³ These payments totaled \$57.78 million and \$62.24 million, respectively.

⁴ Petitioners are seeking quo warranto because they claim the Governor and Legislature have no authority to approve off-tribal lands gambling without a ballot initiative. Petitioners challenge the Governor’s action in the Compact and the Legislature’s ratification of it in Section 285.710(3)(b), F.S., as violative of Amendment 3, where “Florida voters shall have the exclusive right to decide whether to authorize casino gambling in the State of Florida.” The Petitioners claim that the Governor did not have the authority to negotiate the 2021 Gaming Compact authorizing mobile sports betting, nor did the Legislature have authority to ratify that provision. The briefing schedule for the petition was completed in December 2023.