

Regular Session, 2000

HOUSE BILL NO. 12

BY REPRESENTATIVE FAUCHEUX

TAX/TAXATION: Provides for the taxation of certain activities on Indian reservations

1 AN ACT

2 To enact R.S. 47:13, relative to taxation of activities on Indian reservations;
3 to provide for the circumstances under which state taxes may be levied
4 upon nongaming activities and gaming activities; to provide for certain
5 tax compacts and agreements; to provide for good faith negotiations; to
6 provide for certain dedications; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:13 is hereby enacted to read as follows:

9 §13. Taxation of activities on Indian reservations

10 A.(1) The legislature hereby finds and declares the following
11 regarding the taxation of activities on Indian reservations:

12 (a) The state, in a spirit of compromise and with a view to
13 assisting fledgling Indian economic activities, entered into various
14 compacts and agreements with certain Indian tribes on reservations in
15 Louisiana which left many on-reservation activities untaxed even
16 though litigation under past federal law and jurisprudence may have
17 resulted in a favorable result for the state.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (b) Circumstances have changed for many tribes on reservations
2 in the state since the reservations have mature, lucrative business
3 activities and gaming activities which are in direct competition with
4 similar off-reservation business and gaming activities.

5 (c) The compacts and agreements are ending and such on-
6 reservation activities may be subjected to nondiscriminatory state tax,
7 especially if the activities are directed toward non-Indians and are
8 undertaken by non-Indian, Louisiana businesses.

9 (d) The federal law concerning the taxation of activities on
10 Indian reservations has also changed in that federal jurisprudence:

11 (i) No longer recognizes a traditional presumption against
12 taxation of activities on Indian reservations, but now recognizes a
13 state's interest in and its ability to levy its taxes.

14 (ii) Has drawn a distinction between Indian businesses and non-
15 Indian businesses and between transactions with Indians and
16 transactions with non-Indians.

17 (iii) Has presented new criteria for determining whether a tax
18 reaches activities involving a tribe or tribal services received by non-
19 Indians.

20 (e) The federal law concerning the taxation of activities on
21 Indian reservations has also changed in that the Indian Gaming
22 Regulatory Act (IGRA), while barring states from demanding direct
23 taxation of tribes or tribal lands, authorizes states to consider adverse
24 economic impacts on existing gaming activities when negotiating a
25 compact concerning gaming activities on Indian reservations.

1 (f) The federal courts have recognized that IGRA does not, of
2 itself, bar state taxation of on-reservation activities concerning non-
3 Indians.

4 (g) The state's interest in levying its taxes is not merely an
5 interest in raising revenue. The state has an interest in protecting its
6 economy and tax base sufficient to justify its assertion of tax authority
7 over non-Indian Louisiana businesses on reservations which are
8 competing with off-reservation Louisiana businesses.

9 (2) Therefore, the legislature hereby finds that the state's
10 interests in assessing taxes in order to avoid adverse economic impacts
11 from on-reservation competition are especially strong under the
12 circumstances set forth in this Section, but at the same time desires to
13 accommodate and respect federal and tribal interests in tribal self-
14 government and economic development.

15 B.(1) Except as provided in Subsection F of this Section
16 regarding the levy of tax on individuals or entities carrying on gaming
17 activities upon Indian reservations, any tax compact or agreement
18 between the state and an Indian tribe which exists on the August 15,
19 2000, shall be subject to the procedure provided for in this Subsection.

20 (2) The provisions of such tax compacts or agreements shall be
21 honored until the end of their terms. The appropriate state official shall
22 give notice as required under the contract that the state intends to
23 terminate the compact or agreement. At the end of the required notice
24 period under the contract, the taxes of the state shall be levied as
25 provided for in this Section.

1 C. With regard to activities occurring off of Indian reservations,
2 or regarding individuals or entities which carry on such activities, all
3 excise taxes of the state of Louisiana shall be levied upon such
4 activities and upon such individuals or entities unless they are
5 otherwise exempted by law.

6 D. With regard to activities occurring upon Indian reservations
7 which are not directly related to gaming activities, or regarding
8 individuals or entities which carry on such activities, the excise taxes
9 of the state of Louisiana shall be levied on such activities, individuals,
10 or entities if the legal incidence of the tax does not rest either upon the
11 tribe or upon tribal members unless they are otherwise exempted by
12 law.

13 E. With regard to activities occurring upon Indian reservations
14 which are directly related to gaming activities, or regarding individuals
15 or entities which carry on such activities, the excise taxes of the state
16 of Louisiana shall be levied on such activities, individuals, or entities
17 unless they are otherwise exempted by law if all of the following apply:

18 (1) The legal incidence of the tax does not rest either upon the
19 tribe or upon tribal members.

20 (2) The tribe or tribal members contribute relatively little to the
21 activity upon which the tax is levied in that any or all of the following
22 circumstances exist:

23 (a) The activity is carried out largely by nonmembers of the
24 tribe.

1 **(b) The tribe does not have an active role in the development**
2 **and marketing of the activity to non-Indians, or in contributing to the**
3 **quality of the activity or product.**

4 **(c) Seventy-five percent of the funding for the activity comes**
5 **from nontribal and nonfederal sources.**

6 **(3) Similar activities occurring off the reservation, and the**
7 **individuals or entities carrying on such similar activities off the**
8 **reservation, are at a competitive disadvantage if the activities,**
9 **individuals, or entities on the reservation are not taxed.**

10 **(4) The state provides substantial governmental services to the**
11 **individual or entity carrying on the activities, for example, by providing**
12 **criminal and civil laws and a system to enforce laws against fraud; by**
13 **providing laws and a system to secure and facilitate the use of checks**
14 **and credit cards; by providing laws and a system for liens and security**
15 **devices governing mortgages; by providing laws and a system**
16 **governing employment, including workers' compensation; and by**
17 **providing efficient road or highway access bringing people to the**
18 **activity.**

19 **F. With regard to individuals or entities which carry on gaming**
20 **activities occurring upon Indian reservations, compacts or agreements**
21 **entered into pursuant to the Indian Gaming Regulatory Act which exist**
22 **on August 15, 2000, shall be renegotiated at the end of their terms, and**
23 **any new compacts or agreements shall be negotiated, to provide that to**
24 **the maximum extent possible compatible with good faith negotiations,**
25 **a tax equal to eighteen and one-half percent of the net gaming proceeds**

1 from gaming activity on Indian reservations shall be levied upon such
2 individuals or entities if all of the following apply:

3 (1) The legal incidence of the tax does not rest either upon the
4 tribe or upon tribal members.

5 (2) The tribe or tribal members contribute relatively little to the
6 activity upon which the tax is levied in that any or all of the following
7 circumstances exist:

8 (a) The activity is carried out largely by nonmembers of the
9 tribe.

10 (b) The tribe does not have an active role in the development
11 and marketing of the activity to non-Indians, or in contributing to the
12 quality of the activity or product.

13 (c) Seventy-five percent of the funding for the activity comes
14 from nontribal and nonfederal sources.

15 (3) Individuals or entities carrying on similar activities off the
16 reservation are at a competitive disadvantage if the individuals or
17 entities carrying on such activities on the reservation are not taxed.

18 (4) The state provides substantial governmental services to the
19 individual or entity carrying on such activities, for example, by
20 providing criminal and civil laws and a system to enforce laws against
21 fraud; by providing laws and a system to secure and facilitate the use
22 of checks and credit cards; by providing laws and a system for liens and
23 security devices governing mortgages; by providing laws and a system
24 governing employment, including workers' compensation; and by
25 providing efficient road or highway access bringing people to the
26 activity.

1 G. For purposes of this Section, the following terms have the
2 following meanings:

3 (1) "Game" means any banking or percentage game which is
4 played with cards, dice, or any electronic, electrical, or mechanical
5 device or machine for money, property, or any thing of value. "Game"
6 does not include lottery, bingo, charitable games, raffles, electronic
7 video bingo, pull tabs, cable television bingo, wagering on dog or horse
8 racers, sports betting, or wagering on any type of sports event, including
9 but not limited to football, basketball, baseball, hockey, boxing, tennis,
10 wrestling, jai alai, or other sports contest or event.

11 (2) "Gaming activities" means the offering or conducting of any
12 game or gaming device.

13 (3) "Gaming device" means any equipment or mechanical,
14 electromechanical, or electronic contrivance, component, or machine
15 used directly or indirectly in connection with gaming or any game
16 which affects the result of a wager by determining win or loss. The
17 term includes a system for processing information which can alter the
18 normal criteria of random selection, which affects the operation of any
19 game, or which determines the outcome of a game. The term does not
20 include a system or device which affects a game solely by stopping its
21 operation so that the outcome remains undetermined.

22 (4) "Gross revenue" means the total of all value received from
23 gaming activity, including cash, checks, vouchers, instruments, and
24 anything received in payment for credit extended to a patron for
25 purposes of gaming, and compensation received for conducting any
26 game in which the individual or entity carrying on the gaming activity

1 is not party to a wager, less the total of all value or amounts paid out as
 2 winnings to patrons and credit instruments or checks which are
 3 uncollected.

4 (5) "Indian reservations" means "Indian lands" as that term is
 5 defined in 25 U.S.C.A. 2703(4).

6 (6) "Net gaming proceeds" means gross revenue less the total
 7 amount or value paid out to winning patrons or players and uncollected
 8 checks and credit instruments.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Faucheux

HB No. 12

Proposed law requires all excise taxes of the state to be levied upon the following and under the following circumstances unless they are otherwise exempt:

- (1) On activities occurring off of Indian reservations, or on individuals or entities which carry on such activities.
- (2) On activities occurring upon Indian reservations which are not directly related to gaming activities, or on individuals or entities which carry on such activities, unless the legal incidence of the tax rests either upon the tribe or upon tribal members.
- (3) On activities occurring upon Indian reservations which are directly related to gaming activities, or on individuals or entities which carry on such activities, if all of the following apply:
 - (a) The legal incidence of the tax does not rest either upon the tribe or upon tribal members.
 - (b) The tribe or tribal members contribute relatively little to the activity upon which the tax is levied in that any or all of the following circumstances exist:
 - (i) The activity is carried out largely by nonmembers of the tribe.

- (ii) The tribe does not have an active roll in the development and marketing of the activity to non-Indians, or in contributing to the quality of the activity or product.
 - (iii) 75% of the funding for the activity comes from nontribal and nonfederal sources.
- (c) Similar activities occurring off the reservation, and the individuals or entities carrying on such similar activities off the reservation, are at a competitive disadvantage if the activities, individuals, or entities on the reservation are not taxed.
- (d) The state provides substantial governmental services to the individual or entity carrying on the activities, for example, by providing criminal and civil laws and a system to enforce against fraud; by providing laws and a system to secure and facilitate the use of checks and credit cards; by providing laws and a system for liens and security devices governing mortgages; by providing laws and a system governing employment, including workers' compensation; and by providing efficient road or highway access bringing people to the activity.
- (4) Proposed law provides that with regard to individuals or entities which carry on gaming activities occurring upon Indian reservations, compacts entered into pursuant to the Indian Gaming Regulatory Act are required to be renegotiated at the end of their terms, and new compacts are required to be negotiated to provide, to the maximum extent possible compatible with good faith negotiations, a tax equal to 18½% of the net gaming proceeds from gaming activity on Indian reservations shall be levied upon such individuals or entities if all of items listed above for the taxation of activities "directly related to gaming" apply.

The terms "gaming activities", "net gaming proceeds", and other gaming terms used in those definitions are basically the same as those contained in the land-based casino gaming law at R.S. 27:205.

Proposed law requires all compacts except those negotiated under IGRA regarding gaming activities on reservations to be honored until the end of their terms. At that time, the appropriate state official is to give notice that the state intends to terminate the compact. At the end of the required notice period under the contract, the taxes of the state are required to be levied as provided for in proposed law.

(Adds R.S. 47:13)