

said, no, the law did not require ratification by the Legislature, the Governor did have the authority, but this simply makes it clear that the Governor is the party to negotiate with tribes.

SENATOR WESELY: Okay, and so it may be the case, but this definitely makes it the case if we pass the bill?

SENATOR HOHENSTEIN. That's right.

SENATOR WESELY: Is it your understanding, I don't know, has the Governor taken a position on your amendment. If, for instance, your amendment fails and the bill is passed with the Ashford amendment, going back to the previous question, do you think the Governor will veto the bill? Do you have any indication?

SENATOR HOHENSTEIN: I don't think the Governor is in a position to take a position because there is a pending request for good faith negotiations with a tribe on a compact. If the Governor takes a position either way, there is a possibility that the mere taking of that position could constitute bad faith depending on the interpretation of what he's done. I think the Governor is in a box right now. The Governor, it's my understanding, and I think Senator Schellpeper has had discussions with the staff, that the Governor's position is if this comes out of the bill, the Governor is going to negotiate in good faith with the tribes on the issues presented at a compact negotiation. If it stays in the bill, the Governor will do the same thing except the Governor will not be able to negotiate this issue.

SENATOR WESELY: Okay. Now is it your position that if we should try to pursue the Ashford amendment, that in restricting the Governor, that under the court rulings that you've cited, that that removes the state from good faith negotiation and thus puts it in the hands of federal judges, is that the argument?

SENATOR HOHENSTEIN: Yeah, it is not the argument, it is the way the act works. If, in fact, and the cases that not only I have cited, and Senator Ashford has cited, and there is good lot in the article from the professor at Creighton which details the argument, and it is not clear, but in this circuit I think it is clear, that if, in fact, this issue is off the table, you walk in to negotiations and this particular issue is off the table, the first thing that the tribes are going to do, rightfully so,