

**Senate Committee on Governmental Organization
Informational Hearing
Amendment to Tribal-State Gaming Compact between the State of California
and the San Manuel Band of Mission Indians
August 31, 2017 – 9:00 a.m.
Room 4203 State Capitol**

Amended Compact Overview

SUMMARY

The Amendment to the Tribal-State Gaming Compact (hereafter “Amended Compact”) between the State of California and the San Manuel Band of Mission Indians (hereafter “Tribe”) was executed on August 18, 2017. The Amended Compact clarifies that all rooms, buildings, and areas, including hotels parking lots, and walkways, and in which no gaming is conducted, may be located on lands held in trust for the Tribe. In addition, the Amended Compact would add a provision that clarifies that the Tribe has the authority to enter into the Amended Compact.

In 2016, the Tribe entered into a new tribal-state compact [ratified by AB 466 (Brown, Chapter 285, Statutes of 2016)]. The 2016 Compact authorized the Tribe to operate a maximum of 7,500 slot machines at no more than two gaming facilities located on the Tribe’s Indian lands as those lands exist on the effective date of the 2016 Compact. If the Tribe chooses to operate a second facility, it may operate no more than 1,000 slot machines at that second facility.

The Tribe agreed to pay into the Special Distribution Fund (SDF) its pro rata share of costs the State incurs for the performance of its duties under the Compact plus additional amounts of \$500,000, up to a total of \$3 million, to cover a portion of the share of regulatory costs for smaller gaming tribes. The Tribe has also agreed to pay \$19 million annually into the Revenue Sharing Trust Fund (RSTF) or the Tribal Nation Grant Fund (TNGF), to be shared with tribes that are non-gaming or that otherwise are not substantially benefiting from gaming.

Additionally, the 2016 Compact established the San Manuel Community Credit Fund (SMCCF). The purpose of the SMCCF is to provide services for residents of San Bernardino County. These services include fire, law enforcement, public transit, education, tourism, and other services including investments in renewable energy projects, water treatment or conservation projects and payments to support capital improvements and operating expenses for facilities within California that provide health care services to tribal members, Indians, and non-Indians. The Tribe agreed to make quarterly payments into the SMCCF totaling \$29 million per year – no less than \$3 million of the \$29 million annual payment shall be applied to enhancement of Native American education in the State of California. The 2016 compact is set to expire in 2041.

EXISTING LAW

Existing law provides, under the Indian Gaming Regulatory Act (IGRA), for the negotiation and conclusion of compacts between federally recognized Indian tribes and the State for the purpose of conducting Class III gaming activities on Indian lands within a state as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. Existing law expressly authorizes a number of tribal-state gaming compacts between the State of California and specified Indian tribes. Existing law authorizes the conduct of Class III gaming activities to the extent such activities are permitted by state law, a gaming compact has been concluded by a federally recognized tribe and the State, and the compact has been approved by the Secretary of the Interior.

Existing law limits the operation of Class III gaming activities to Indian lands acquired on or before October 17, 1988. Existing law also provides for certain exceptions to conduct gaming activities on Indian lands acquired after October 17, 1988.

Existing law defines Indian lands to mean all lands within the limits of any Indian reservation, and any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

Existing law requires the state to negotiate to conclude a compact in good faith with an Indian tribe having jurisdiction over the Indian lands upon which the Class III gaming activity is to be conducted. Existing law also provides the United States district courts with jurisdiction over any cause of action initiated by a tribal government alleging that the state failed to negotiate in good faith to conclude a compact. Furthermore, existing law prescribes the remedy, mediation supervised by the courts, if it is found that the state failed to negotiate in good faith to conclude a compact.

Existing law authorizes the Governor, under the California Constitution, to negotiate and conclude compacts, subject to ratification by the Legislature.

Brief History and Background – San Manuel Band of Mission Indians

The San Manuel Band of Mission Indians is a federally recognized Indian tribe located near the City of Highland, California. The Tribe is one of several clans of Serrano Indians, who are the indigenous people of the San Bernardino highlands, passes, valleys, mountains and high deserts which share a common language and culture.

The San Manuel Indian Reservation, named after its leader, Santos Manuel, and situated in a rugged hillside with little flat land for development, was established by Executive Order in 1891 and recognized as a sovereign nation with the right of self-government. The Reservation is home

to the Yuhaaviatam Clan of the Serrano Indians and consists of just over 900 acres. There are more than 200 tribal members enrolled with the Tribe.

In a determined effort to turn around its economic position, the Tribe opened a bingo hall in 1986. Approximately 20 years later the Tribe opened the San Manuel Indian Bingo & Casino that today includes nearly 4,000 slot machines, more than 120 tables, a 1,400 seat Bingo Hall, four restaurants, a food court and multiple food kiosks as well as other amenities. The Tribe is among the top employers in the County of San Bernardino, employing more than 4,000 people, 75% of whom live within the county. In addition to the San Manuel Indian Bingo & Casino, the Tribe's economic development efforts include businesses and investments in the local region as well as state-wide, and in other states.

According to the Tribe, the Tribe has continued to maintain its unique form of governance. Like other governments it seeks to provide a better quality of life for its citizens by building infrastructure, maintaining civil services and promoting social, economic and cultural development. Today, the San Manuel tribal government oversees many governmental units including the departments of fire, public safety, education and environment. The Tribe has made progress toward becoming a self-sufficient tribal government with an established economic and social outlook.

The Tribe is active in supporting projects in neighboring communities via government-to-government agreements for law enforcement and public safety services. The Tribe has also generously contributed to non-profit groups and community organizations in the San Bernardino region in support of cultural, social, and economic projects that benefit local jurisdictions. Since 2007, it has contributed some \$122 million to charities, including more than half of that amount (approximately \$70 million) to charitable groups in San Bernardino where economic challenges remain among the greatest in the state.

The San Manuel Indian Reservation, like other tribal lands in the United States, is a sovereign territory with a tribal nation and its own system of government. Tribal government consists of two governing bodies: a General Council comprised of adult members 21 years and older, and a seven-member Business Committee elected by the General Council. The Business Committee has a Chairperson, Vice-Chairperson, Secretary, Treasurer, and three at-large Business Committee members elected to two-year terms. As elected officials, the Business Committee is responsible for enforcing by-laws, establishing policies, protecting business interests and preserving the sovereignty of the Tribe.

Details of the Amended Compact

The Amended Compact clarifies that all rooms, buildings, and areas, including hotels parking lots, and walkways, and in which no gaming is conducted, may be located on lands held in trust

for the Tribe. In addition, the Amended Compact would add a provision that clarifies that the Tribe has the authority to enter into the Amended Compact.

ADDITIONAL BACKGROUND INFORMATION

Indian Gaming Regulatory Act

In 1988, Congress enacted IGRA to provide a statutory basis for the operation and regulation of gaming on Indian lands. IGRA provides that an Indian tribe may conduct gaming activity on Indian lands if the activity “is not specifically prohibited by federal law and is conducted within a State which does not prohibit such gaming activity.”

IGRA distinguishes between three classes of gaming (Class I, Class II, and Class III) and provides for different forms of regulation for each class. Class I gaming includes “social games” for minor prizes or “traditional forms of Indian gaming.” Class II gaming is defined to include bingo and card games that are explicitly authorized by the laws of the state, or that are not explicitly prohibited by the laws of the state and are played at any location in the State, so long as the card games are played in conformity with those laws and regulations. Class III gaming includes such things as slot machines, casino games, and banked card games such as black jack and baccarat. Class III gaming may only be conducted under terms of a compact negotiated between an Indian tribe and a State.

IGRA was enacted against a legal background in which Indian tribes and individuals generally are exempt from state taxation within their own territory. IGRA provides that with the exception of assessments permitted under the statute, to defray the State’s costs of regulating gaming activity, IGRA shall not be interpreted as conferring upon a State authority to impose any tax, fee, charge, or other assessment upon an Indian tribe to engage in Class III activity. Nor may a State refuse to enter into negotiations based on the lack of authority to impose such a tax, fee, charge, or other assessment.

When a tribe requests negotiations for a Class III compact, IGRA requires the State to negotiate with the Indian tribe in good faith. IGRA provides a comprehensive process to prevent an impasse in compact negotiations, which is triggered when a tribe files suit alleging that the State has refused to negotiate or has failed to negotiate in good faith.

Before 2000, the California Constitution prohibited Class III gaming. In 2000, California voters approved Proposition 1A, which had been proposed by the Governor and passed by the Legislature. Proposition 1A amended the California Constitution to permit the State to negotiate compacts with federally recognized Indian tribes for certain Class III gaming activities. Because non-Indian parties were still forbidden from operating gaming facilities, Proposition 1A granted Indian tribes a “constitutionally protected monopoly on most types of Class III games in California.”

Rincon Decision

The U.S. Supreme Court in July 2011 refused to consider the decision of the Ninth Circuit Court of Appeals rejecting a Class III Tribal-State Gaming Compact negotiated by then Governor Schwarzenegger with the Rincon Band of Luiseno Mission Indians. The issue of this case's impact on Indian gaming throughout the country has been a topic of great debate.

As noted, IGRA authorizes states to receive compensation for costs related to tribal gaming such as regulation and gaming addiction, and to offset the effects of casinos on surrounding communities. However, states are prohibited from assessing taxes on tribal casino revenues, so unjustified payments to a state's General Fund are no longer permissible unless the tribes are getting something in return for the required payments, such as those authorized by IGRA.

Any payments to the State, above those needed to mitigate impacts of gaming must be in exchange for a benefit deemed "exclusive" to the tribe.

The Rincon Band challenged the legality of California's "second generation" compacts pursuant to which the signatory tribes would be entitled to increase their slot machine count in return for paying percentages of the new slot machine revenue to the state's General Fund. The Ninth Circuit had affirmed a lower court decision that the new financial concessions were nothing more than a state tax on tribal casino revenues which is prohibited by IGRA.

The Rincon Band refused to sign the amended compact which had already been executed by several other tribes choosing instead to demand that it be given the expanded gaming opportunity without making the new financial concessions. The Ninth Circuit Court of Appeals concluded that a "non-negotiable, mandatory payment of 10% of net win into the State treasury for unrestricted use yields public revenue, and is [therefore] a tax, and that the court was therefore required to consider the State's demand as evidence of bad faith under IGRA's statutes."

The court noted that "the State could rebut the presumption of bad faith by demonstrating that the revenue demanded was to be used for the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing activities, but the State's need for general tax revenue was insufficient to demonstrate good faith."

Special Distribution Fund

Existing law creates the SDF in the State Treasury for the receipt of revenue contributions made by tribal governments pursuant to the terms of the 1999 model Tribal-State Gaming Compacts and authorizes the Legislature to appropriate money from the SDF for the following purposes: grants for programs designed to address gambling addiction; grants for the support of state and local government agencies impacted by tribal government gaming; compensation for regulatory costs incurred by the CGCC and DOJ in connection with the implementation and administration of compacts; payment of shortfalls that may occur in the RSTF; disbursements for the purpose

of implementing the terms of tribal labor relations ordinances promulgated in accordance with the terms of the 1999 compacts; and, any other purpose specified by law. (Pursuant to compact renegotiations that took place with several of the larger gaming tribes during the Schwarzenegger administration, revenue from those tribes is directed into the state General Fund, instead of the SDF.)

Current law establishes a method of calculating the distribution of appropriations from the SDF for grants to local government agencies impacted by tribal gaming. This method includes a requirement that the State Controller, in consultation with the CGCC, deposit funds into County Tribal Casino Accounts and Individual Tribal Casino Accounts based upon a process that takes into consideration whether the county has tribes that pay, or do not pay, into the SDF.

Revenue Sharing Trust Fund

Existing law creates in the State Treasury the RSTF for the receipt and deposit of moneys derived from gaming device license fees that are paid into the RSTF pursuant to the terms of specified tribal-state gaming compacts for the purpose of making distributions to non-compacted California tribes (e.g., federally-recognized non-gaming tribes and tribes that operate casinos with fewer than 350 slot machines). Revenue in the RSTF is available to CGCC, upon appropriation by the Legislature, for making distributions of \$1.1 million annually to non-compact tribes. The RSTF was created as part of the 1999 compacts, which, in conjunction with the passage of Proposition 1A, created gaming compacts with approximately 60 California tribes. Non-compact tribes are considered third-party beneficiaries of the 1999 compacts.

Tribal Nation Grant Fund

This particular fund (referenced in recent compacts) was created to complement the RSTF and provides for the distribution of funds to non-gaming tribes, upon application of such tribes for purposes related to effective self-governance, self-determined community, and economic development. Payments from this fund are intended to be made to non-gaming tribes on a “need” basis, upon application. Payments from the TNGF are expected to begin in 2018.

SUPPORT

None received

OPPOSITION

None received

PRIOR AND CURRENT LEGISLATION

AB 1606 (Cooper) would ratify the tribal-state gaming compact entered into between the State of California and the Wilton Rancheria, executed on July 19, 2017. (Pending on the Assembly Floor)

SB 187 (Hall, Chapter 306, Statutes of 2016) ratified the tribal-state gaming compact entered into between the State of California and the Jamul Indian Village, executed August 4, 2016.

SB 404 (De León, Chapter 229, Statutes of 2016) ratified the tribal-state gaming compact entered into between the State of California and the Viejas Band of Kumeyaay Indians, executed on June 22, 2016.

SB 1313 (Hall, Chapter 310, Statutes of 2016) ratified the tribal-state gaming compact entered into between the State of California and the Yocha Dehe Wintun Nation, executed on August 4, 2016.

AB 2915 (Garcia, Chapter 240, Statutes of 2016) ratified an amendment to the 2006 tribal state gaming compact entered into between the State of California and the Agua Caliente Band of Cahuilla Indians, executed on August 4, 2016.

AB 2358 (Gonzalez, Chapter 298, Statutes 2016) ratified the tribal-state gaming compact entered into between the State of California and the Pechanga Band of Luiseno Indians, executed August 4, 2016.

AB 1977 (Wood, Chapter 296, Statutes of 2016) ratified the first amendment to the 2006 tribal-state gaming compact entered into between the State of California and the Yurok Tribe, executed August 4, 2016.

AB 1767 (Bigelow, Chapter 291, Statutes 2016) ratified first amendment to the 2015 tribal-state gaming compact entered into between the State of California and the Jackson Rancheria Band of Miwuk Indians, executed on June 22, 2016.

AB 1282 (Gray, Chapter 287, Statutes 2016) ratified the tribal-state gaming compact entered into between the State of California and the Buena Vista Rancheria of Me-Wuk Indians, executed on June 28, 2016.

AB 629 (Gonzalez, Chapter 160, Statutes 2016) ratified the tribal-state gaming compact entered into between the State of California and the Pala Band of Mission Indians, executed on May 6, 2016.

AB 466 (Brown, Chapter 285, Statutes of 2016) ratified an amendment to the 2006 tribal-state gaming compact entered into between the State of California and the San Manuel Band of Mission Indians, executed on August 16, 2016.

AB 291 (Atkins, Chapter 284, Statutes of 2016) ratified the tribal-state gaming compact entered into between the State of California and the Barona Band of Mission Indians, executed on June 22, 2016.

AB 795 (Atkins, Chapter 520, Statutes of 2015) ratified the tribal-state gaming compact entered into between the State of California and the Sycuan Band of Kumeyaay Nation, executed on September 2, 2015.

AB 1540 (Gray, Chapter 531, Statutes of 2015) ratified the tribal-state gaming compact entered into between the State of California and the Santa Ynez Band of Chumash Indians, executed on August 26, 2015.

AB 315 (Bigelow, Chapter 512, Statutes of 2015) ratified the amended and restated tribal-state gaming compact entered into between the State of California and the United Auburn Indian Community, executed on August 14, 2015.

AB 475 (Bigelow, Chapter 8, Statutes of 2015) ratified the tribal-state gaming compact entered into between the State of California and Jackson Rancheria Band of Miwuk Indians, executed on February 1, 2015.

SB 1356 (De León, Chapter 314, Statutes of 2014) ratified the amendment to the tribal-state gaming compact entered into between the State of California and the Viejas Band of Kumeyaay Indians, executed on August 12, 2014.

SB 1224 (Correa, Chapter 300, Statutes of 2014) ratified the tribal-state gaming compact entered into between the State of California and the Karuk Tribe, executed on December 4, 2013.

AB 1245 (V. Manuel Perez, Chapter 462, Statutes of 2013) ratified the tribal-state gaming compact entered into between the State of California and the Ramona Band of Cahuilla Indians located in Riverside County, executed on June 10, 2013.

AB 277 (Hall, Chapter 51, Statutes of 2013) ratified two new compacts entered into between the State of California and the following tribes: North Fork Rancheria, executed on August 31, 2012 and the Wiyot Tribe, executed on March 20, 2013.

AB 1267 (Hall, Chapter 6, Statutes of 2013) ratified the amended tribal-state gaming compact entered into between the State of California and the Shingle Springs Band of Miwok Indians, executed on November 15, 2012.

SB 668 (Fuller, Chapter 67, Statutes of 2013) ratified the tribal-state gaming compact entered into between the State of California and the Fort Independence Indian Community of Paiute Indians, executed on February 28, 2013.

AB 517 (Hall, Chapter 12, Statutes of 2012) ratified the tribal-state gaming compact entered into between the State of California and the Federated Indians of Graton Rancheria of Sonoma County, executed on March 27, 2012.

AB 787 (Chesbro, Chapter 340, Statutes of 2012) ratified the amendment to the tribal-state gaming compact entered into between the State of California and the Coyote Valley Band of Pomo Indians, executed on July 25, 2012.

AB 1418 (Hall, Chapter 412, Statutes of 2011) repealed those provisions ratifying the tribal-state gaming compact entered into between the State of California and Pinoleville Pomo Nation, executed on March 9, 2009 and instead ratified the tribal-state gaming compact entered into between the State of California and the Pinoleville Pomo Nation, executed on August 8, 2011. Ratification of this revised compact authorized the Tribe to operate up to 900 slot machines with up to 15% of the casino's net win from the slots designated for local communities, gambling mitigation and regulation, instead of requiring revenue contributions be made to the General Fund as provided by the 2009 compact.

AB 1020 (Chesbro, Chapter 27, Statutes of 2011) repealed the ratification of the tribal-state gaming compact entered into between the State of California and the Habematolel Pomo of Upper Lake, executed on September 2, 2009, and instead ratified a new tribal-state gaming compact entered into between the State of California and the Habematolel Pomo of Upper Lake, executed on March 17, 2011. Ratification of this revised compact authorized the Tribe to operate up to 750 slot machines with up to 15 percent of the net-win from those gaming devices being paid to the SDF and the RSTF, instead of requiring revenue contributions be made to the General Fund as provided by the 2009 compact.

SB 89 (Budget Committee, Chapter 1, Statutes of 2010) ratified the tribal-state gaming compact entered into between the State of California and the Habematolel Pomo of Upper Lake, executed on September 2, 2009.

AB 122 (Coto, Chapter 3, Statutes of 2009) ratified the tribal-state gaming compact entered into between the State of California and the Pinoleville Pomo Nation, executed on March 10, 2009.

AB 3072 (Price, Chapter 334, Statutes of 2008) ratified the first amendment to a tribal-state gaming compact entered into between the State of California and the Shingle Springs Band of Miwok Indians, executed on June 30, 2008.

SB 106 (Wiggins, Chapter 37, Statutes of 2007) ratified a new compact between the State of California and the Yurok Tribe of the Yurok Reservation.

SB 174 (Ducheny, Chapter 39, Statutes of 2007) ratified the first compact amendment to the compact between the State of California and Sycuan.

SB 175 (Ducheny, Chapter 38, Statutes of 2007) ratified the first compact amendment to the compact between the State of California and Morongo.

SB 903 (Padilla, Chapter 40, Statutes of 2007) ratified the first compact amendment to the compact between the State of California and Pechanga.

SB 941 (Padilla, Chapter 226, Statutes of 2007) ratified the first compact amendment to the compact between the State of California and San Manuel.

SB 957 (Torlakson, Chapter 41, Statutes of 2007) ratified the first compact amendment to the compact between the State of California and Agua Caliente.

SB 470 (Ducheny, Chapter 527, Statutes of 2006) ratified the first amendment to the compact between the State and the Quechan Tribe of the Fort Yuma Reservation.

SB 1117 (Burton, Chapter 856, Statutes of 2004) ratified two new and two amended compacts entered into between the State and the following tribes: Coyote Valley Band of Pomo Indians (new compact); Fort Mojave Indian Tribe (new compact); Buena Vista Rancheria of Me-Wuk Indians (amended compact); and Ewiiapaayp Band of Kumeyaay Indians (amended compact).

AB 687 (Nuñez, Chapter 91, Statutes of 2004) ratified amendments to five compacts entered into between the State and the following tribes: Pala Band of Mission Indians; Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation; Rumsey Band of Wintun Indians; United Auburn Indian Communities; and, Viejas Group of Kumeyaay Indians. Also, provided for the issuance of bonds in an amount not to exceed \$1.5 billion by the California Infrastructure and Economic Development Bank and required the net proceeds of the sale of the compact assets to be deposited in the Traffic Congestion Relief Fund and the Transportation Deferred Investment Fund.

SB 930 (Burton, Chapter 802, Statutes of 2003) ratified a compact between the State of California and the Torres-Martinez Desert Cahuilla Indians.

SB 411 (Ducheny, Chapter 790, Statutes of 2003) ratified compacts between the State of California and the La Posta Band of Diegueno Mission Indians and the Santa Ysabel Band of Diegueno Mission Indians in San Diego County.

Proposition 1A (Adopted by the People of California on March 7, 2000) modified the prohibition against casinos and lotteries in the California Constitution to authorize the Governor to negotiate compacts, subject to legislative ratification, for the operation of slot machines, lottery games, and banking and percentage card games by federally recognized Indian tribes on Indian lands in

California, in accordance with federal law. Authorized slot machines, lottery games, and banking and percentage card games to be conducted and operated on Indian lands subject to the compacts.

AB 1385 (Battin, Chapter 874, Statutes of 1999) designated the Governor as the state officer responsible for negotiating and executing compacts between the state and federally recognized Indian tribes located in the state. Also, ratified 57 compacts and created two special funds in the State Treasury (SDF and RSTF), as specified.

SB 287 (Burton, Chapter 409, Statutes of 1998) ratified 11 compacts negotiated between the State of California and Indian tribes that permitted Class III video gaming devices on tribal lands and established a process for ratifying other compacts.