

Senate Committee on Governmental Organization
Informational Hearing
Amended and Restated Tribal-State Gaming Compact between the State of California and
the United Auburn Indian Community
August 25, 2015 – 9:30 a.m.
Room 4203 State Capitol

Compact Overview

SUMMARY

The Amended and Restated Tribal-State Gaming Compact (hereafter “Compact”) between the State of California and the United Auburn Indian Community (hereafter “Tribe”) was executed on August 14, 2015.

The Compact authorizes the Tribe to operate a maximum of 3,500 slot machines at not more than two gaming facilities, and only on those Indian lands held in trust for the Tribe as of the execution date of this Compact, as described. The Tribe may combine and operate in each gaming facility any forms and kinds of gaming permitted under law, except to the extent limited under the Indian Gaming Regulatory Act (IGRA) and any applicable regulations adopted pursuant thereto, this Compact, or the Tribe’s gaming ordinance.

According to the Governor’s office, the Compact reflects a continued commitment by the Tribe to revenue sharing with non-gaming and limited gaming tribes so that the economic benefits of gaming reach tribal governments that have not chosen to operate a tribal casino. Under the terms of this Compact, United Auburn will become one of the largest contributors to the Revenue Sharing Trust Fund (RSTF). The terms also provide a framework for the sharing of gaming revenue with Placer County and other local jurisdictions for fire, law enforcement, public transit, education, tourism and other services, and provide incentives for investments in renewable energy projects, non-gaming related economic development projects and health care facilities that provide a mutual benefit to tribal members and local residents. In addition, up to \$9 million may be directed by the Tribe specifically to finance infrastructure projects on non-Indian lands within Placer County that benefit the Tribe and the surrounding community.

This Compact supersedes a 2004 amended compact [AB 687 (Nuñez), Chapter 91, Statutes of 2004] between the Tribe and the State of California, which currently expires in 2030. The 2004 amended compact replaced the Tribe’s initial compact signed in 1999 with Governor Gray Davis, who negotiated gambling agreements with more than 60 tribes. The 2004 amended compact allowed the Tribe to operate an unlimited number of Class III slot machines in exchange for payments, as defined, to the state General Fund for machines added after ratification of the compact. Under the 1999 compact, the Tribe could not operate more than

2,000 gaming devices. In 2014, the Tribe's payments to the General Fund amounted to approximately \$40.4 million. Additionally, under the 2004 amended compact the Tribe agreed to pay \$2 million yearly into the RSTF.

The Governor's office contends that this Compact continues to assure the protection of the health and safety of the casino patrons, guests and employees and affirms the role of a tribal-state association of gaming regulators to provide a framework within which tribal and state gaming regulators can exchange information and collaborate to ensure that the gaming public has continued confidence in the integrity of casino operations.

Once effective (legislative ratification and federal approval required), this Compact will be in full force and effect for State law purposes until December 31, 2041. The vehicle identified for providing the constitutionally required legislative ratification of this Compact is AB 315 (Bigelow).

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

According to information provided by the Tribe, the Auburn Rancheria was officially established in 1917 when the United States government purchased 20 acres on the south side of Auburn for a mixed group of Nisenan Maidu and Miwok Indians that had been living at the site for many years. Many had fled to join the Foothill Nisenan at the Auburn village and roundhouse after being chased out of Sutter, Yuba and Sacramento counties by American settlers in the late 1800s.

In 1935, 36 adult members of the Auburn Rancheria participated in self-governance elections conducted by the Bureau of Indian Affairs. In 1953, congress enacted the Rancheria Act, which led to the termination of federal recognition of the Auburn Rancheria in 1967. Most of the tribe's land at the former Auburn Rancheria was subsequently lost to tribal ownership.

In 1991, the Auburn Indians reorganized and adopted a new tribal constitution. In 1994, the Auburn Indian Recognition Act was passed by congress, restoring the tribe's federal recognition as an Indian tribe, now called the United Auburn Indian Community. The Tribe signed the 1999 tribal-state gaming compact and acquired 50 acres in the Sunset Industrial Area for a casino and 1,100 acres in Sheridan for tribal housing. These parcels were taken into trust by the federal government, and in 2003, Thunder Valley Casino Resort opened in Lincoln, CA.

The Tribe notes that in 2000, it signed a ground breaking memorandum of understanding with Placer County, which has been recognized as meeting the local agreement requirement in subsequent compact amendments. The casino operated for seven years under a management contract with Station Casinos, based in Las Vegas, NV. In 2010, the Tribe completed a casino expansion, including a hotel tower and assumed management of its facility.

In 2004, the United Auburn Indian Community, among several other tribes, signed a new compact with Governor Arnold Schwarzenegger. That compact allowed for an unlimited number of slot machines, but those numbers were effectively limited by a steeply escalating flat fee per device over the tribe's 2004 device count of 1,907. The 2004 compact also provided for a payment of \$2 million per year to the RSTF and payments to the state's General Fund that amounted to \$40.4 million in 2014.

In 2013, the courts ruled (See Rincon Decision below) that such payments could not be required in a tribal-state compact unless the state provided something to the tribe of equal value. The court ruled that since the California constitution already provided Class III exclusivity, the state

was not giving something of value in return for the payments. The court also noted that its decision did not invalidate existing compacts such as United Auburn's.

The Tribe notes that it has 425 members, about half of whom are under 18 years old. Since opening Thunder Valley Casino Resort, the Tribe has been able to establish a K-8 school for tribal children, a pre-school, foster care homes, and a program to support tribal elders. The tribe also provides health care and wellness programs and free college and skills training to its members.

The Tribe's 144,500 square foot casino has approximately 2,600 slot machines, table games and a poker room, nine restaurants, five bars and lounges, a bingo operation, a 9,740 square foot hall for various events and concerts, a 300 room hotel and a spa and other amenities including a Johnny Miller designed golf course nearby (Whitney Oaks Golf Course). The Tribe employs approximately 2,500 individuals.

The Compact's preamble states that since the time that the State and the Tribe entered into the 2004 amended compact, circumstances in the overall economy and the casino gaming market have changed and that the Tribe and the State desire to enter into this Compact to ensure that the Tribe is the primary beneficiary of the gaming operation and can continue to fund essential tribal government services through gaming revenue.

The Tribe and the State agree that this Compact is designed to enhance the Tribe's economic development and self-sufficiency and to protect the health, safety and general welfare interests of the Tribe and its citizens, the surrounding community, and the California public, and to promote and secure long-term stability, mutual respect, and mutual benefits.

Additionally, the Compact's preamble indicates that the State and the Tribe recognize that the exclusive rights the Tribe enjoys under this Compact provide a unique opportunity for the Tribe to continue to engage in the gaming activities in an economic environment free of competition from the operation of slot machines and banked card games on non-Indian lands in California and that this unique economic environment is of great value to the Tribe.

Furthermore, the Compact's preamble states that in consideration of the exclusive rights enjoyed by the Tribe to engage in the gaming activities and to operate gaming devices as specified in this Compact for an extended term with a substantial reduction in payments, and the other meaningful concessions offered by the State in good faith negotiations, and pursuant to IGRA, the Tribe restates its intent, *inter alia*, to provide to the State, on a sovereign-to-sovereign basis, and to local jurisdictions, fair cost reimbursement and mitigation revenues from the gaming devices operated pursuant to this Compact on a payment schedule, as specified.

Key Components of this Compact

Scope of Class III Gaming Authorized and Financial Terms:

As noted above, pursuant to the 1999 compact, the Tribe operated 1,907 gaming machines. When the compact was amended in 2004, it authorized the Tribe to operate an *unlimited* number of additional gaming devices with an escalating fee per device schedule as follows:

Number of Additional Devices to Annual Fee (per Device)

- 1,907 to 2,000 \$11,000
- 2,001 to 2,500 \$12,000
- 2,501 to 3,000 \$13,200
- 3,001 to 3,500 \$17,000
- 3,501 to 4,000 \$20,000
- 4,001 to 4,500 \$22,500
- 4,500 and above \$25,000

Furthermore, pursuant to the 2004 compact, the Tribe currently pays \$33.8 million annually to the state, which was calculated to be at least 10 percent of the annualized net win between July 1, 2003 and May 31, 2004 for the 1,907 machines that it operated at that point. Currently, the Tribe operates approximately 2,600 machines. Its payments to the State last year under the above fee schedule were \$40.4 million. In addition, the Tribe pays \$2 million annually to the RSTF, for a total to the state of \$42.4 million in 2014.

Under this Compact, the Tribe may operate a maximum of 3,500 gaming devices (slot machines), banking or percentage card games, and any devices or games that are authorized under state law to the California State Lottery, provided that the Tribe will not offer such games through use of the Internet unless others in the state not affiliated with or licensed by the California State Lottery are permitted to do so under state and federal law. The Tribe shall not engage in Class III Gaming that is not expressly authorized in the Compact.

The Tribe will pay \$15 million per year into the State's General Fund but will receive a credit of up to \$9 million per year in exchange for payments to Placer County, state agencies, or other local jurisdictions to finance infrastructure projects on non-Indian lands in Placer County that benefit the Tribe and the surrounding community.

The Tribe will pay \$18 million per year to the State, which will be deposited into the RSTF, from which the State has a trust obligation to provide \$1.1 million per year to non-gaming and limited gaming tribes in California. When the RSTF is fully funded, the State may deposit compact payments into the Tribal Nation Grant Fund (TNGF). From the money slated for the RSTF/TNGF, the State will provide the Tribe a credit of up to \$9 million per year of this payment for:

- 1) Non-gaming economic development investments that benefit the State and the Tribe because of their cultural, social or environmental value and that provide economic diversification for the Tribe;
- 2) Payments to support operational expenses and capital improvements for non-tribal government entities in Placer County;
- 3) Investments and associated taxes paid to the State for renewable energy projects;
- 4) Capital improvements and operating expenses for facilities that provide health care services to tribal members, Indians and non-Indians;
- 5) Payments to Placer County for lost property, sales and hotel taxes at the Tribe's casino;
- 6) Payments to Placer County and other local jurisdictions for fire protection, law enforcement, public transit, education, tourism and other services not otherwise required as mitigation for significant off-reservation impacts of the gaming operation in the required intergovernmental agreement.

Additionally, under this Compact the Tribe will pay \$3 million per year into the Special Distribution Fund (SDF) for the following purposes:

- 1) To cover its pro rata share of state agency costs relating to tribal gaming, including problem gambling programs, the California Gambling Control Commission (CGCC), the Department of Justice and the Office of the Governor; and
- 2) Other uses of the SDF, including grants to state and local agencies impacted by tribal gaming, compensation for costs resulting from intra-tribal disputes, and backfilling any shortfalls in the RSTF.

During each year in which this Compact is in effect, the Tribe's pro rata share of the State's regulatory costs will be deducted from the Tribe's quarterly revenue contribution to the State. The Tribe's pro rata share payment will be paid into the SDF, as specified. At the time each quarterly payment is due, the Tribe shall submit to the State a report, prepared and certified by an authorized representative of the gaming operation, as defined.

Licensing and Regulation

This Compact stipulates that copies of tribal gaming ordinances and all the tribal regulatory rules, regulations and internal control standards must be provided to the Bureau of Gambling Control (Bureau) and the CGCC. This Compact requires the Tribe to make available to the public upon request documents relating to the gaming operation, tribal gaming ordinances, and the rules of Class III games, tribal ordinances governing torts, employment nondiscrimination standards, and rules concerning patron disputes if these documents are not otherwise publicly

available. Furthermore, this Compact allows the CGCC, if it is reasonably necessary, to review materials and information received by the Tribal Gaming Agency in connection with the licensing of a gaming employee.

Labor Relations

This Compact recognizes the fact that the Tribe has entered into a collective bargaining agreement with the Hotel Employees and Restaurant Employees Union (UNITE HERE) as meeting compact requirements for a Tribal Labor Relations Ordinance (TLRO). As such, no change in the TLRO is necessary to address employee rights. This Compact also specifies that the existence of such a long-standing positive relationship between the Tribe and UNITE HERE is a critical component of the terms and conditions of this Compact.

Memorandum of Understanding

This Compact recognizes the Tribe's 2000 Memorandum of Understanding with Placer County as meeting compact requirements for an intergovernmental agreement to mitigate significant off-reservation impacts to the environment, law enforcement, fire protection, public safety, medical services, and problem gambling.

Patron Disputes

This Compact provides that the Tribe must attempt to resolve patron disputes filed within seven days of the play or operation of a Class III game, including refusal to pay any alleged winnings. If a patron is dissatisfied with the resolution, the Tribe shall inform the patron in writing within 15 days of his or her right to seek binding arbitration. Binding arbitration shall be settled by a retired judge, in accordance with the streamlined arbitration rules and procedures of Judicial Arbitration and Mediation Services (JAMS). The Tribe agrees to waive its sovereign immunity in order to be compelled in federal or state court to abide by the resolution of arbitration.

Minimum Internal Controls

The Tribe is required to provide to the CGCC, upon written request, a copy of the independent certified public accountant agreed-upon procedures report conducted annually for submission to the National Indian Gaming Commission (NIGC) pursuant to federal law. This report verifies that the gaming operation is in compliance with the NIGC's minimum internal control standards.

Tribal Environmental Impact Report (TEIR)

The Tribe is required to prepare a "Tribal Environmental Impact Report" (TEIR) to measure off-reservation environmental impacts including an evaluation of energy consumption prior to initiating the development of a project for a facility. A completed TEIR shall be filed with Placer County, the Department of Justice, and the State Clearinghouse.

Building Codes and Fire Safety

This Compact requires facilities to meet or exceed the California Building Code and the Public Safety Code applicable to Placer County. The Tribe must submit to fire safety inspections by the state, and to rectify deficiencies, lest be subject to court order prohibiting occupancy of the portion of the Gaming Facility with the deficiencies.

Public and Workplace Liability

The Tribe is required to obtain and maintain a commercial general liability insurance policy which provides coverage of no less than \$10 million. The Tribe must also adopt a Tort Liability Ordinance stipulating that California tort law governs claims. And, provides that California tort law shall apply to specified claims if the Tribe fails to adopt a Tort Liability Ordinance.

Workers' Compensation

This Compact provides that, in lieu of participating in the State's workers' compensation system, the Tribe may create and maintain a system that provides redress for employee work-related injuries through insurance or self-insurance. The Tribe's system must include a specified scope of coverage as well as a means of enforcement against the Tribe. The Tribe is also required to provide benefits comparable to those mandated for comparable employees under state law. Not later than the effective date of this Compact, the Tribe will advise the State of its election to participate in the statutory workers' compensation system or, alternatively, will forward to the State all relevant ordinances and documents establishing its own system.

Inspections

This Compact allows the CGCC to inspect all gaming devices in operation at the casino, including all the software, hardware, and associated equipment and systems that support the operation of the gaming devices, on a random basis four times annually to confirm that they operate and play properly.

Slot Machine Testing and Inspections

This Compact provides that slot machines will have to be tested, approved and certified by an independent gaming test laboratory or state governmental gaming test laboratory to ensure they are being operated according to specified technical standards. Also, requires the Tribal Gaming Agency to maintain adequate records that demonstrate compliance with software and hardware specifications. In addition, the CGCC is authorized to annually conduct up to four random inspections of slot machines in operation to confirm that the slot machines are operating in conformance with these standards.

Independent Auditor

This Compact requires the Tribe to provide the CGCC results from an independent auditor of a compliance audit with the requirements concerning the manufacturer or distributor and the slot machine testing.

Exclusivity

This Compact provides that in the event the exclusive right of Indian tribes to operate Class III gaming in California pursuant to the California Constitution is nullified by the enactment, amendment, or repeal of a state statute or constitutional provision or the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of this Compact, that gaming devices may lawfully be operated by non-Indian entities, the Tribe shall have the right to: (i) terminate this Compact, in which case the Tribe will lose the right to operate Class III gaming authorized by this Compact or (ii) continue under this Compact with entitlement to a reduction of the rates specified following conclusion of negotiations, to provide for (a) compensation to the State for the reasonable costs of regulation, as defined; (b) reasonable payments to local governments impacted by tribal government gaming; (c) grants for programs designed to address gambling addiction; and, (d) such assessments as may be permissible at such time under federal law.

Amendment by Agreement

The terms and conditions of this Compact may be amended at any time by the mutual and written agreement of both parties, provided that each party voluntarily consents to such negotiations in writing. Any amendments to this Compact shall be deemed to supersede, supplant and extinguish all previous understandings and agreements on the subject.

Prohibitions Regarding Minors

The Tribe shall prohibit persons under the age of twenty-one (21) years from being present in any room or area in which gaming activities are being conducted unless the person is en route to a non-gaming area of the gaming facility, or is employed at the Gaming Facility in a capacity other than as a gaming employee.

Alcohol Provisions

This Compact makes it explicit that standards for alcohol service shall be subject to state law; the Alcoholic Beverage Control (ABC) Act.

Emergency Services Accessibility and Possession of Firearms

The Tribe must make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees. Also, prohibits the possession of firearms

by any person in the gaming facility at all times except for federal, state, or local law enforcement personnel, or tribal law enforcement or security personnel, as authorized.

Effective Date

This Compact shall not be effective unless and until all of the following have occurred: (a) the Compact is ratified by statute in accordance with state law and (b) notice of approval or constructive approval is published in the Federal Register. Once effective, this Compact shall be in full force and effect for State law purposes until December 31, 2041.

ADDITIONAL BACKGROUND INFORMATION

Indian Gaming Regulatory Act (IGRA)

In 1988, Congress enacted the Indian Gaming Regulatory Act (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 rejecting a Class III Tribal-State Gaming Compact negotiated by 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.

Another vehicle for state receipt of casino payments above those payments must be in exchange for some benefit deemed "exclusive" to the tribe. To this end, it is fact that a number of other state (Governors) have attempted to create "exclusive grants" in favor of compact signatory tribes in return for payments to the state treasuries.

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.

Rincon had refused to sign the amended compact which already had 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 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 (SDF)

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: (a) grants for programs designed to address gambling addiction; (b) grants for the support of state and local government agencies impacted by tribal government gaming; (c) compensation for regulatory costs incurred by the CGCC and the Department of Justice in connection with the implementation and administration of compacts; (d) payment of shortfalls that may occur in the Indian Gaming RSTF; (e) disbursements for the purpose of implementing the terms of tribal labor relations ordinances promulgated in accordance with the terms of the 1999 compacts; and, (f) 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.)

The 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 not pay, into the SDF. The distribution formula "sunsets" on January 1, 2021.

Existing law also establishes an Indian Gaming Local Community Benefit Committee in each county in which gaming is conducted, specifies the composition and responsibilities of that committee, and requires that committee to make the selection of grants from the casino accounts. Among other things, the committee is responsible for establishing all application policies and procedures for grants from the casino accounts.

Additionally, existing law requires the State Auditor to conduct an audit every three years and report its findings to the Legislature regarding the allocation and use of SDF grant monies.

Revenue Sharing Trust Fund (RSTF)

Existing law also 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-compact tribes (e.g., federally-recognized non-gaming 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 (TNGF)

This particular fund 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. The designated purpose of the RSTF is rigid and formulaic. This new fund is designed to be fluid and payments are intended to be made to non-gaming tribes on a “need” basis, upon application by non-gaming tribes.

Prior Related Informational Hearing

In 2004, the Legislature ratified amendments to five Indian gaming compacts (AB 687 – Nuñez, Chapter 91, Statutes of 2004 pertaining to the Pala Band of Mission Indians; the Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation; the Rumsey Band of Wintun Indians; the United Auburn Indian Community; and, the Viejas Group of Kumeyaay Indians) which eliminated the cap on the number of slot machines that could be operated by any of the compacted tribes. Under these compacts, the tribes agreed to make payments directly to the State in exchange for the exclusive right to conduct class III gaming from non-tribal interests. The amended compacts also provided for a payment of up to \$1.5 billion to the state for transportation improvement projects, to be financed by a bond securitized by gaming revenues which would be repaid over 18 years. Additionally, the amended compacts provided a graduated scale of progressively higher annual fees for additional slot machines above the existing limit of 2,000 machines, reaching up to \$25,000 per additional machine. The fees represented approximately 15% of the net win of the additional machines on average and were estimated to provide as much as \$150-\$200 million in annual revenue to the state over time from these tribes alone.

Furthermore, under the 2004 amended compacts, among other things, the tribes agreed: (1) to make annual payments in the amount of \$2 million per tribe for a total of \$10 million annually to the RSTF; (2) to allow the state to inspect the slot machines and submit patron disputes to binding arbitration; (3) to prepare an Environmental Impact Report for new projects and to negotiate mitigation of off-reservation impact and increased demand for services with local governments, with binding arbitration if negotiations reach impasse; (4) to meet or exceed California Building Code and Public Safety Code on new construction and to allow the state to inspect construction in progress; and, (5) to modify their Tribal Labor Relations Ordinance to provide workers with enhanced organizing rights in exchange for a no-strike clause.

The accuracy of the Schwarzenegger Administration’s predicted and actual revenues and

expenditures, as they related to the new revenue stream from gaming, and issues raised by litigation (*Glendon B. Craig, et al. v. Schwarzenegger, et al.*) challenging the validity of the bonds and the source of repayment led the Chairman of the Senate Committee on Governmental Organization to convene an informational hearing in February of 2005 entitled, “*Forecasting Revenues: A Look at Indian Gaming Compacts and State Budget Revenue Estimates*” to give the members of the Legislature and the general public a better understanding of this complex matter and related issues that essentially stalled the issuance of the bonds and the transportation projects they were meant to finance.

Witnesses at the hearing included state finance and gambling officials, the State Treasurer, representatives of the Governor, as well as state gaming interests. In general, the witnesses agreed that without a swift resolution of the issues discussed, the bonds would unlikely be sold in a timely manner and construction of the transportation projects would be jeopardized. (It should be noted that the transportation bonds in question were never issued by the Treasurer’s Office.)

Pauma Band of Luiseno Mission Indians Lawsuit

In 2010, the Pauma Band of Luiseno Mission Indians ceased payments to the State and brought suit against the State in federal court claiming that the State acted in bad faith by misrepresenting significant information relative to the number of gaming machines available for licensure. Prior to its 2004 amended compact, the Tribe was paying approximately \$315,000 a year to the state (into the SDF and RSTF) under terms of its 1999 compact. The payment rose to \$7.75 million a year (initially for securitizing the proposed transportation bond and subsequently deposited directly into the general fund) under the tribe’s 2004 amended compact. In 2013, the court sided with Pauma and, thus, the state no longer receives payments from the Pauma Tribe. The State has appealed that decision.

As noted above, the 2004 Pauma compact amendments were negotiated at the same time as the current United Auburn compact, both of which were ratified by the same bill (AB 687 – Nuñez). Both compacts provided for fixed payments to the state for securitizing transportation bonds. The Rincon decision as well as the Pauma case, have limited some of the state’s options when negotiating and renegotiating compact agreements.

SUPPORT (Verified 8/21/15)

City of Lincoln, City of Rocklin, City of Roseville, Jackson Rancheria Band of Miwuk Indians, Pala Band of Mission Indians, Placer County Board of Supervisors and UNITE HERE

OPPOSITION (Verified 8/21/15)

None received

PRIOR LEGISLATION

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 (Yurok).

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 (Quechan).

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, Ewiaapaayp 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.

Proposition 5 (Adopted by the People of California on November 3, 1998) specified the terms and conditions of mandatory compacts between the State and tribal governments for class III gambling on Indian lands; amended California law to allow slot machines and banked card games at tribal casinos; provided for contributions to trust funds benefiting non-gaming tribes, statewide emergency medical care programs, and programs benefiting communities near tribes; and, allowed tribes to retain a monopoly on authorized gambling. Proposition 5 was found to be unconstitutional because it amended a provision of the Government Code and did not amend the

Constitution. The proposition was invalidated in its entirety, save the final sentence of Government Code Section 98005, containing the state's consent to federal suits brought by California tribes pursuant to IGRA.

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.

SB 8 (Lockyer, Chapter 867, Statutes of 1997) repealed the Gaming Regulation Act and enacted the Gambling Control Act of 1997. Established CGCC and charged it with, among other things, the authority to issue, deny, revoke, suspend, or impose conditions, restrictions, or limitations on licenses, permits, or approvals to ensure that unsuitable or unqualified persons are not involved in the operation of gambling. Established the Bureau of Gambling Control (formerly known as the Division of Gambling Control) within the Department of Justice and charged it with specified investigative and enforcement duties.