

**Senate Committee on Governmental Organization
Informational Hearing
Amendment to the Tribal-State Gaming Compact Between the State of California and the
Habematolel Pomo of Upper Lake
August 22, 2018 – 9:00 a.m.
Room 112, State Capitol**

Compact Overview

SUMMARY

The Amendment to the Tribal-State Gaming Compact (hereafter “Amended Compact”) between the State of California and the Habematolel Pomo of Upper lake (hereafter “Tribe”) was executed on August 16, 2018. The Amended Compact conforms the worker compensation provisions of the Tribe’s existing compact, ratified in 2011, to those of more recent compacts. In addition, the Amended Compact clarifies that nothing in any other tribal compact should be a factor in construing the terms of this Amended Compact and brings the Tribal Labor Relations Ordinance provisions of the Tribe’s compact in line with more recent compacts.

In 2011, the Tribe entered into a new tribal-state compact [ratified by AB 1020 (Chesbro), Chapter 27, Statutes of 2011)] that authorized the operation of no more than 750 slot machines at one gaming facility located on those Indian lands held in trust for the Tribe. Under terms of the 2011 Compact, the Tribe agreed to pay \$900 per slot machine into the Revenue Sharing Trust Fund if the Tribe operates 350 slot machines or more.

According to the Amended Compact’s preamble, the State and the Tribe share an interest in creating a framework within which the gaming facility can operate successfully to generate revenue for essential government programs for tribal members while also ensuring that other interests, including an efficient and effective system to address the appropriate process to protect employees who are injured or become sick while performing work-related duties.

The Tribe currently operates the Running Creek Casino located along the historic Highway 20 corridor of Upper Lake, California. Opened in 2012, the casino includes approximately 33,000 square feet of gaming, 349 slot machines, five table games, three restaurants, a banquet room, and live entertainment.

The vehicle identified for providing the constitutionally required legislative ratification of this Amended Compact is AB 1966 (Aguiar-Curry).

EXISTING LAW

Existing law provides, under 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 land 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 and 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 – Habematolel Pomo of Upper Lake

The Habematolel Pomo of Upper Lake is a federally recognized tribe of Pomo Indians in Lake County, California. The Tribe's reservation, the Upper Lake Rancheria, is located near the town of Upper Lake in northwestern California. The Tribe has a general membership of approximately 273 tribal members, the majority of whom reside in the counties of Lake, Santa Clara, Contra Costa, Napa, Mendocino, Sonoma, Yolo, Alameda, and Los Angeles due to historic displacement.

Ancestral Pomo people occupied parts of central and Northern California, known as “Pomo Country.” The Pomos, along with the Patwin and Wintun, were actually made up of numerous

small bands or villages spread throughout the area north of the Sacramento River Delta and between the Russian River and the California River Valleys, as well as along the Pacific Coast.

On November 13, 2008, the United States Department of Interior determined that the Tribe met the conditions of the restored lands exception under the Indian Gaming Regulatory Act (IGRA), and the Tribe accepted two parcels of land, in trust for the benefit of the Tribe, totaling 11.24 acres in the County of Lake (adjacent to and south of State Route 20 and east of State Route 29). This land is within the Tribe's aboriginal territory and eligible for development for gaming purposes.

The Tribe is governed by a tribal council composed of seven elected members elected at-large for a term of four years. The council includes a chairperson, a vice-chairperson, a treasurer, and a secretary. The Habematolel Pomo tribal office currently has nine employees to operate their own housing, environmental, and educational programs, including computer classes and GED preparation.

The Tribe currently operates the Running Creek Casino located along the historic Highway 20 corridor of Upper Lake, California. Opened in 2012, the casino includes approximately 33,000 square feet of gaming, 349 slot machines, five table games, three restaurants, a banquet room, and live entertainment.

The Tribe reports that the goals of the Habematolel Pomo of Upper Lake Tribe are as follows: to preserve its Pomo culture; to protect the interests of its children; to use, conserve and control its acquired land and natural resources; to promote the stability and security of its Tribe and families; and to promote its people's social and economic well-being.

Details of the Amended Compact

Worker Compensation System- authorizes the Tribe to opt out of the State's Workers Compensation program and instead authorizes the Tribe to create and maintain their own workers compensation program as long as the tribe provides the same benefits and legal protections to employees as the state. Recent compacts have included a similar provision.

Construction - similar to other compacts, this Amended Compact specifies that neither the presence nor omission in another tribal-state Class III Gaming of language that is present in this Amended Compact shall be a factor in construing the terms of this Amended Compact.

Tribal Labor Relations Ordinance – updates the Tribal Labor Relations Ordinance provisions of the Tribe's compact to make them consistent to recent compacts.

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.”

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 Department of Justice (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.

SUPPORT

Mechoopda Indian Tribe of Chico Rancheria

OPPOSITION

None received

PRIOR AND CURRENT LEGISLATION

AB 1433 (Wood, Chapter 11, Statutes of 2018) ratified the tribal-state gaming compact entered into between the State of California and the Elk Valley, Rancheria, executed on August 31, 2017.

SB 6 (Hueso, Chapter 455, Statutes of 2017) ratified the tribal-state gaming compact entered into between the State of California and the Quechan Tribe of the Fort Yuma Indian Reservation, executed on August 31, 2017.

SB 585 (McGuire and Mendoza, Chapter 464, Statutes of 2017) ratified the tribal-state gaming compact entered into between the State of California and the Dry Creek Rancheria Band of Pomo Indians, executed on August 18, 2017.

SB 626 (Dodd, Chapter 465, Statutes of 2017) ratified the amendment to the tribal-state gaming compact entered into between the State of California and the Federated Indians of Graton Rancheria, executed on August 18, 2017.

AB 174 (Bigelow, Chapter 435, Statutes of 2017) ratified the tribal-state gaming compact entered into between the State of California and the United Auburn Indian Community, executed on August 18, 2017.

AB 253 (Bigelow, Chapter 437, Statutes of 2017) ratified the tribal-state gaming compact entered into between the State of California and the Tuolumne Band of Me-Wuk Indians, executed on August 18, 2017.

AB 394 (Mathis, Chapter 440, Statutes of 2017) ratified the tribal-state gaming compact entered into between the State of California and the Tule River Indian Tribe of California, executed on August 31, 2017.

AB 891 (Mayes, Chapter 447, Statutes 2017) ratified the tribal-state gaming compact entered into between the State of California and the Morongo Band of Mission Indians executed on September 6, 2017.

AB 1378 (Gray, Chapter 450, Statutes of 2017) ratified the amendment to the tribal-state gaming compact entered into between the State of California and the San Manuel Band of Mission Indians executed on August 18, 2017.

AB 1606 (Cooper, Chapter 453, Statutes of 2017) ratified the tribal-state gaming compact entered into between the State of California and the Wilton Rancheria, executed on July 19, 2017.

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.