

Senate Committee on Governmental Organization
Informational Hearing
Amendment to the Tribal-State Gaming Compact Between the State of California and the
Karuk Tribe
August 14, 2018 – 9:30 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 Karuk Tribe (hereafter “Tribe”) was executed on August 1, 2018. The Amended Compact conforms the worker compensation provision of the Tribe’s existing compact, ratified in 2014, 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. All other provisions of the existing Compact remain intact.

In 2013, the Tribe entered into a new tribal-state compact [ratified by SB 1224 (Correa), Chapter 300, Statutes of 2014)] that authorized the operation of no more than 1,500 slot machines at one gaming facility located on those Indian lands held in trust for the Tribe in Yreka, California.

Under terms of the 2013 Compact, the Tribe agreed to pay the State its pro rata share of the costs the State incurs for the performance of its duties under the Compact as well as 10% of the casino’s net win, if it operates more than 350 slot machines, to be shared with tribes that are not gaming or that otherwise are not substantially benefiting from gaming.

On April 14, 2018, the Tribe opened the Rain Rock Casino (Casino). The Casino is a 36,000 square foot facility with 349 slot machines, 8 table games, and a 100 seat restaurant. According to the Tribe, the Casino employs approximately 200 individuals.

The Tribe currently has intergovernmental agreements with Siskiyou County and with the City of Yreka. As part of the agreement with Siskiyou County, the Tribe agreed to pay \$150,000 per year to mitigate impact on law enforcement/prosecution. As part of the agreement with the City of Yreka, the Tribe agreed to pay for improvements on roads near the Casino, purchase one police cruiser, pay \$25,000 per year for fire services, pay \$440,000 for wastewater capacity support, and comply with city water requirements applicable to other commercial water users.

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 – Karuk Tribe

The Karuk Tribe was federally recognized on January 15, 1979. The Karuk or “upriver people” inhabit an aboriginal territory that encompasses all of Siskiyou County and a small portion of northeastern Humboldt County, this area covers more than 6,400 square miles of land. The Tribe was once entirely supported by the seasonal salmon migrations, acorns, deer, elk, and gathering plant food sources from the land. Their secular needs were met by the river resources and rich, abundant forests. Currently, many of the families reside in small outlying communities and unincorporated townships spread out along the rivers and valleys.

According to the Tribe, the Tribe has 3,749 enrolled members and is the second largest tribe in the State of California. The Tribe is governed by an elected nine-member Tribal Council. The Tribe's administrative offices and government operations are centralized in the community of Happy Camp in Siskiyou County; additional program offices are located 75 miles to the northeast in Yreka, and 45 miles to the southwest in Orleans (Humboldt County).

The Tribe's organizational infrastructure and program departments include: Health and Human Services, Tribal Administration, People's Center and Museum, Tribal Housing, Tribal Employment Rights Office, Department of Natural Resources, Department of Education, Head Start, Child and Family Services, Tribal Temporary Aid Needy Families, Tribal Court, Tribal Community Centers, Senior Nutrition Program, Self-Governance, Karuk Community Development, and Facilities Management.

On April 14, 2018, the Tribe opened the Rain Rock Casino in the city of Yreka, CA. The Casino is a 36,000 square-foot facility with 349 Class III gaming machines, 8 table games and a 100 seat restaurant. According to the Tribe, the Casino employs close to 200 team members. Each year the Tribe undergoes a complete Financial and Compliance Audit. According to the Tribe, the most recent audit was performed in February 2017 where no material weakness or significant deficiencies were identified.

Details of the Amended Compact

Worker Compensation System: This Amended Compact 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.

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: (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 DOJ in connection with the implementation and administration of compacts; (d) payment of shortfalls that may occur in the 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.)

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-compact 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, established in the 2012 Graton Compact, 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

None received

OPPOSITION

None received

PRIOR AND CURRENT LEGISLATION

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.