

**Senate Committee on Governmental Organization**  
**Informational Hearing**  
**Tribal-State Gaming Compact between the State of California and the Viejas Band of**  
**Kumeyaay Indians**  
**July 21, 2016 – 2:00 p.m.**  
**Room 4203 State Capitol**

**Compact Overview**

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**SUMMARY**

The Tribal-State Gaming Compact (hereafter “Compact”) between the State of California and the Viejas Band of Kumeyaay Indians (hereafter “Tribe”) was executed on June 28, 2016.

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 in Appendix A of this Compact. 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.

The Tribe has agreed to contribute into the Special Distribution Fund (SDF) its pro rata share of the State’s regulatory costs which include programs that provide education, counseling and treatment for Californians affected by problem gambling. The Tribe has also agreed to contribute four and three quarter percent (4.75%) of its “gross gaming revenue” from the operation of up to 2,500 slot machines to the Revenue Sharing Trust Fund (RSTF) or the Tribal Nation Grant Fund (TNGF) to be shared with tribes that are not gaming or that otherwise are not substantially benefiting from gaming. The Compact provides for an increase in percentage payments to the RSTF or TNGF, as specified, if the Tribe operates between 2,501 to 3,500 slot machines.

Additionally, the Compact provides a framework for the sharing of gaming revenue with the County of San Diego and other local jurisdictions. Specifically, from its payments to the RSTF or the TNGF, the Tribe may take annual credits of up to sixty percent (60%) for infrastructure improvements and fire, law enforcement, public transit, education, tourism and other services including investments in renewable energy, water conservation or recycling projects and payments to support capital improvements or operating expenses for facilities that provide health care services to tribal members and other members of the local community.

Furthermore, the Compact: (a) provides a regulatory framework that respects the role of the tribal gaming agency as the primary regulator while also ensuring that state gaming regulators

fulfill their responsibilities; (b) requires the Tribe to conduct its gaming activities pursuant to an internal control system that implements minimum internal controls that are no less stringent than those in federal regulations; (c) requires the Tribe to adopt a Tribal Labor Relations Ordinance, as specified; (d) preserves the provisions in the Tribe's existing compact that address mitigation of off-reservation impacts of gaming related projects; and, (e) contains provisions to protect the health and safety of patrons, guests, and employees.

This Compact supersedes a 2014 amended compact [SB 1356 (De León, Chapter 314, Statutes of 2014)] between the Tribe and the State of California. The 2014 amended compact, among other things, converted the Tribe's fixed revenue share payment to the state into a percentage-based payment in order to account for the impact on revenue caused by changing economic conditions and to enhance the economic development, long-term stability and self-sufficiency of the Tribe. The percentage-based payment structure was intended to ensure the Tribe remained the primary beneficiary of its gaming operation as required by federal law.

The 2014 amended compact superseded a 2004 amended compact [AB 687 (Nuñez, Chapter 91, Statutes of 2004)] between the Tribe and the State of California which 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 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.

According to the Governor's Office, certain terms of the Compact are consistent with provisions of more recent compacts related to licensing, compliance enforcement and mitigation of off-reservation gaming impacts, but have been updated to reflect, among other things, the evolving nature of financial markets, as well as the professionalism of the Tribe's regulators and their constructive relationship with state gaming regulators.

The Governor's Office contends that the terms of the Compact reflect a continued commitment by the Tribe to revenue sharing with non-gaming and limited gaming tribes through the RSTF and TNGF so that the economic benefits of gaming reach tribal governments that have not chosen to operate a tribal casino.

The Compact's preamble states that 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.

The Compact's preamble also 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.

Additionally, 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 the number of gaming devices as specified in this Compact, and the other meaningful concessions offered by the State in good faith negotiations, and pursuant to IGRA, the Tribe restates its commitment to provide to the State, on a sovereign-to-sovereign basis, and to local jurisdictions, fair cost reimbursement and mitigation from revenues derived from the gaming devices operated pursuant to this Compact on a payment schedule, as specified.

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 termination date of the 2014 amended compact was December 31, 2030. The vehicle identified for providing the constitutionally required legislative ratification of this Compact is SB 404 (De León).

### **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**

The Viejas Band of Kumeyaay Indians, one of the remaining 12 bands of the Kumeyaay Indian Nation (Barona, Campo, Ewiiapaayp, Inaja-Cosmit, Jamul, LaPosta, Manzanita, Mesa Grande, San Pasqual, Santa Ysabel, Sycuan and Viejas) is a 252-member federally recognized tribe located on a 1,600-acre reservation in the Viejas Valley, east of the community of Alpine in San Diego County, California. The Viejas Band has a "trust" relationship with the federal government, enforces federal laws and participates in issues pertinent to its land and people on a government-to-government basis. The Tribe notes that "membership in the Viejas Band of Kumeyaay Indians is determined by direct descent from the families forced from their original Capitan Grande Reservation, who contributed their share from the sale of their lands for the El Capitan Reservoir to purchase the current reservation in the Viejas Valley."

According to information provided by the Tribe, the Viejas Band has experienced tremendous economic prosperity that has successfully helped increase access to health care, education and general welfare to its people and their children, who will carry on the Kumeyaay culture for years to come. Under the umbrella of Viejas Enterprises, the Tribe's properties include Viejas Casino & Resort; Viejas Outlet Center, a 37-acre shopping center; Alpine Springs Recreational Vehicle Park; and Ma-Tar-Awa Recreational Vehicle Park, the tribe's first business venture that opened in 1976. Through revenues brought in by the Tribe's business enterprises, "the Tribe has been able to reinvest millions of dollars back into its community, with 90 percent of dollars generated at Viejas Casino & Resort returning to the local and state economy."

The Tribe's casino has over 2,000 slot machines, up to 86 table games, numerous diverse dining options, a bingo operation, an off-track betting facility, lounge, concert venues and a poker room. The Tribe opened a five-story, \$36 million hotel in March 2013 that is located on the east side of the casino with approximately 99 rooms and 29 suites, a pool with a patio area and cabanas, a business center, fitness room, and other amenities. In October of 2015, the Tribe opened a second luxury hotel tower with another 100 plus rooms and an additional 5 suites. Today, the expanded resort consists of 203 deluxe rooms and 34 VIP suites, state-of-the-art meeting spaces, two modern fitness centers, and a ballroom for hosting weddings and special events.

In 1999, the Tribe and the State entered into a Tribal-State compact, which enabled the Tribe, through revenues generated by its gaming operation, to improve the governance, environment,

education, health, safety, and general welfare of its citizens, and to promote a strong tribal government, self-sufficiency, and to provide essential government services to its citizens.

### **Key Provisions of the Compact**

Scope of Class III Gaming Authorized: The Tribe is authorized to operate up to 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.

Authorized Gaming Facility: The Tribe may establish and operate not more than two gaming facilities and engage in Class III Gaming only on eligible Indian lands held in trust for the Tribe, located within the boundaries of the Tribe's reservation and trust lands as those boundaries exist as of the execution date of this Compact, as legally described in the Compact (Appendix A).

Exclusivity: 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: (1) terminate this Compact, in which case the Tribe will lose the right to operate Class III gaming authorized by this Compact or (2) continue under this Compact with entitlement to a reduction of the rates specified in the chart below following conclusion of negotiations, to provide for (a) compensation to the State for the 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.

Payments to the Special Distribution Fund (SDF): This Compact requires the Tribe to pay to the State, on a pro rata basis, the costs the State incurs for the performance of all its duties under this Compact, as established by the monies appropriated in the annual Budget Act for the performance of their duties under the Class III Gaming Compacts each fiscal year for the California Gambling Control Commission (CGCC), the California Department of Justice, the Office of the Governor, the California Department of Public Health Programs, Office of Problem Gambling, the State Controller, the Department of Human Resources, and the Financial Information System for California, or any agency or agencies the State designates as a successor to them. The Tribe's pro rata share of the State's costs in any given year this Compact is in effect shall be calculated using the following equation: *"The maximum number of gaming devices operated in the gaming facility for the previous fiscal year as determined by the State Gaming Agency, divided by the maximum number of gaming devices operated by all federally*

*recognized tribes in California pursuant to tribal-state Class-III gaming compacts during the previous fiscal year, multiplied by costs, equals the Tribe's pro rata share."*

**\*It should be noted that the 2014 amended compact required the Tribe to provide the State a revenue contribution based upon the average number of gaming devices equal to a percentage of the "net win," as defined, from such gaming devices according to the following schedule:**

<b>Average Number of Gaming Devices in Operation During Quarter</b>	<b>Percentage of Gaming Devices' Net Win</b>
1 to 2,000	8%
2,001 to 2,500	10%
2,501 to 3,000	12%
3,001 to 3,500	14%
3,501 to 4,000	16%
4,001 to 4,500	18%

The 2014 amended compact also required that a portion of the Tribe's quarterly revenue contribution to the State be allocated to the SDF as follows: (a) During years one and two, \$5 million dollars; (b) During year three, \$4 million dollars; (c) During year four, \$3 million dollars; and, (d) During year five, \$2 million dollars.

In addition, the 2014 amended compact provided that in each year of the compact, any amount of the Tribe's quarterly revenue contributions due to be paid to the SDF that is remaining after the Tribe's payments are made and deposited into the SDF shall go to the General Fund.

Payments to the RSTF or the TNGF: This Compact requires the Tribe to pay to the State a quarterly revenue contribution, for deposit into the RSTF or the TNGF, which shall be based upon the average number of gaming devices in operation during such quarter, equal to a percentage of the "Gross Gaming Revenue" per device according to the following schedule:

<b>Average Number of Gaming Devices in Operation During Quarter</b>	<b>Percentage of Gaming Devices' Gross Revenue</b>
351 to 2,500	4.75%
2,501 to 3,000	6%
3,001 to 3,500	7%

“Gross Gaming Revenue” is defined as the win from gaming activities, which is the difference between gaming wins and losses before deducting costs and expenses or deducting incentives or adjusting for changes in progressive jackpot liability accruals. Generally, the difference between patron wagers and the payouts made on winning wagers.

**\*It should be noted that the 2014 amended compact required the Tribe to make annual payments of \$2 million into the RSTF or the TNGF.**

Credits Applied to the RSTF or the TNGF: The State agrees to provide the Tribe with annual credits for up to sixty percent (60%) of the payments otherwise due to be paid into the RSTF or TNGF for the following:

- 1) Payments or the value of services provided to San Diego County, local jurisdictions, and nonprofit and civic organizations operating facilities or providing services within the County for fire, law enforcement, emergency medical services, public transit, education, tourism, recreation, and other services and infrastructure improvements intended to serve off-reservation needs of County residents – such payments shall be subject to approval by the County or local jurisdiction in the County and at least twenty percent (20%) of the annual credits must be utilized for the above stated purposes;
- 2) Non-gaming related capital investments and economic development projects by the Tribe that provide mutual benefits to the Tribe and the State because, for instance, they have particular cultural, social or environmental value, or diversify the sources of revenue for the Tribe’s general fund;
- 3) Payments to support operating expenses and capital improvements for non-tribal governmental agencies or facilities operating within the County;
- 4) Investments in, and any funds paid to the State in connection with, renewable energy projects that, in part, serve the gaming facility, to include facilities that incorporate charging stations for electric or other zero-emission vehicles that are available to patrons and employees of the gaming facility;
- 5) Payments to support capital improvements and operating expenses for facilities located on the reservation or within California that provide health care services to tribal members, Indians, and non-Indians;

- 6) Investments by the Tribe for water treatment or conservation projects and recycling projects; and,
- 7) Payments to other federally-recognized tribes for governmental or general welfare purposes. All excess authorized credits that cannot be applied in any one year because they would exceed the sixty percent (60%) may be applied as an annual credit in all following years that this Compact is in effect, in the same percentages, until completely exhausted.

Quarterly Contribution Report: 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. The report must include: (a) calculation of the maximum number of gaming devices operated each day, (b) the Net Win calculation, (c) the amount due the SDF, (d) calculation of the amount due to the RSTF/TNGF, and (e) the total amount of the quarterly payment.

### **Additional Compact Components**

- Gaming Ordinance and Regulations – all gaming activities conducted under this Compact shall, at a minimum, comply with (1) a gaming ordinance duly adopted by the Tribe and approved in accordance with IGRA, (2) all rules, regulations, procedures, specifications, and standards duly adopted by the National Indian Gaming Commission (NIGC), the Tribal Gaming Agency, and the State Gaming Agency, and (3) the provisions of this Compact, as specified.
- Licensing Requirements and Procedures – all persons in any way connected with the gaming operation or gaming facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under this Compact, including, without limitation, all gaming employees, gaming resource suppliers, financial sources, and any other person having a significant influence over the gaming operation, must be licensed by the Tribal Gaming Agency and cannot have had any determination of suitability denied or revoked by the CGCC. Also, every gaming employee must obtain, and thereafter maintain current, a valid tribal gaming license, as specified.
- Minimum Internal Control Standards (MICS) – the Tribe must conduct its gaming activities pursuant to an internal control system that implements MICS that are no less stringent than those contained in the MICS of the federal NIGC standards, as specified. It requires gaming to operate pursuant to a written internal control system that reasonably assures that assets are safeguarded and accountability over assets is maintained; liabilities are properly recorded and contingent liabilities are properly disclosed; financial records are accurate and reliable; transactions are performed in accordance with the Tribal Gaming Agency's authorization; access to assets is permitted only in accordance with the

Tribal Gaming Agency's approved procedures; recorded accountability for assets is compared with actual assets; and, functions, duties and responsibilities are appropriately segregated and performed by qualified personnel. The Tribe is required to provide the CGCC, upon written request, a copy of the independent certified public accountant agreed-upon procedures report conducted annually for submission to the NIGC pursuant to federal law. This report verifies that the gaming operation is in compliance with the NIGC's MICS.

- Patron Disputes – the Tribe (through its Tribal Gaming Agency) must attempt to resolve patron disputes within three days of the play or operation of any game, including refusal to pay to a patron any alleged winnings from any gaming activities. If a patron is dissatisfied with the resolution, the Tribe shall inform the patron in writing within 15 days of the right to resolution of the dispute by the Tribal Gaming Agency. If dissatisfied with the resolution, the patron has the right to seek resolution in either the Viejas tribal Court or before an independent review board. The Tribal Gaming Agency shall conduct an appropriate investigation, provide to the patron a copy of its procedures concerning patron complaints, and render a decision in accordance with industry practice. The decision shall be issued within 60 days of the patron's request. Any party dissatisfied with the award of the Viejas Tribal Court or the independent review board may, at the party's election, appeal to the Intertribal Court of Southern California Court of Appeals, provided that the party making the election must bear all costs and expenses associated with the appeal regardless of the outcome. The Tribe agrees to waive its sovereign immunity in connection with the jurisdiction of the Viejas Tribal Court, the independent review board or the Intertribal Court of Southern California, and in any suit in state or federal court to enforce or execute a judgment based upon the award of the tribal court, independent review board or appellate court.
- 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. Also, requires the Tribe to adopt a Tort Liability Ordinance containing provisions that are the same as California tort law to govern all claims of bodily injury, personal injury, or property damage arising out of, connected with, or relating to the casino. In addition, requires the Tribe to expressly provide for waiver of the Tribe's sovereign immunity and its right to assert sovereign immunity with respect to the resolution of claims in the Viejas Tribal Court, by the independent review board, and the Intertribal Court of Southern California Court of Appeals. Furthermore, the Compact provides that California tort law shall apply to specified claims if the Tribe fails to adopt a Tort Liability Ordinance.
- Environmental Protections – the Tribe must prepare a Tribal Environmental Impact Report (TEIR) and negotiate mitigation of any off-reservation impacts, including an

evaluation of energy consumption, prior to initiating the development of a project for a facility. The Compact provides procedures regarding the (1) Notice of Preparation of Draft TEIR, (2) Notice of Completion of Draft TEIR, and (3) Issuance of Final TEIR. The Tribe's failure to prepare an adequate TEIR when required may warrant an injunction where appropriate. A completed TEIR must be filed with San Diego County, the Department of Justice, the CGCC, and the State Clearinghouse. Before commencement of a Project, and no later than the issuance of the final TEIR, the Tribe shall offer to commence negotiations with San Diego County to, amongst other things, provide for the timely mitigation of any significant effect on the off-reservation environment including provisions relating to compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe as a consequence of the Project.

- Enhanced Audit and Compliance Review Procedures – in addition to providing for an annual independent audit, the Compact allows the state to conduct its own annual audit and compact compliance review.
- Inspection and Testing of Slot Machines – 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. The State Gaming Agency would be 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.
- Compliance Enforcement – it is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Compact, IGRA, any applicable NIGC and State Gaming Agency regulations, and the tribal gaming ordinance with respect to gaming operation and facility compliance, and to protect the integrity of the gaming activities, the reputation of the Tribe and the gaming operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the tribal gaming agency shall adopt and enforce regulations, procedures, and practices.
- Labor Provisions – provides that the gaming activities authorized by this Compact may only commence after the Tribe has adopted an ordinance identical to the Tribal Labor Relations Ordinance (TRLO), referenced as Appendix C of the Compact, and the gaming activities may only continue as long as the Tribe maintains the ordinance. If the Tribe employs 250 or more persons in a tribal casino facility, then the provisions of the TLRO

become effective. The TLRO provides for a secret ballot election and union neutrality. The Tribe will not oppose a union organization but can advocate the benefits of working for the Tribe. A labor union must issue a Notice of Intent or Organize (NOIO). For a period of 365 days following delivery of a NOIO, the union shall not engage in strikes, picketing, boycotts, attack websites, or other economic activity at or in relation to the tribal casino or related facility. During the 365 days after the Tribe received the NOIO, the union must collect dated and signed authorization cards and complete the secret ballot election. Failure to complete the secret ballot election within 365 days shall preclude the union from delivering another NOIO for a period of two years (730 days). After the certification that 30% of the employees have expressed an interest in the union, a notice of election shall be issued and the election shall be concluded within 30 calendar days thereafter. Secret ballot elections shall be held at the workplace and at least one neutral location. Employees may mail in ballots provided they are received by election day. Mediation for any collective bargaining agreement impasse shall be made in conjunction with the Federal Mediation and Conciliation Service (FMCS). The mediation process is modeled on the Agricultural Labor Relations Act and authorizes the mediator to resolve the impasse. Disputes are presented to an arbitrator with expertise in labor law and appropriate challenges to the arbitrator's decision may be presented to a state superior court.

- Workers' Compensation – the Tribe agrees to participate in the state's workers' compensation program with respect to employees at the casino. All disputes arising from the workers' compensation laws shall be heard by the State Workers' Compensation Appeals Board pursuant to the California Labor Code. The Tribe acknowledges the jurisdiction of the Board in such manners. Furthermore, the Tribe agrees that it will participate in the state's unemployment compensation program for providing benefits and unemployment compensation disability benefits to employees at the casino. The Tribe shall withhold all taxes due to the state, except for Tribal members living on the Tribe's reservation, and forward such amounts to the state.
- 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 – makes it explicit that the purchase, sale, and service of alcoholic beverages shall be subject to state law – the Alcoholic Beverage Control (ABC) Act.
- Tobacco Provisions – the Tribe agrees to provide a non-smoking area in the gaming facility and to utilize a ventilation system throughout the gaming facility that exhausts tobacco smoke to the extent reasonably feasible under state-of-the-art technology existing

as of the date of the construction or significant renovation of the gaming facility, and further agrees not to offer or sell tobacco to anyone younger than the minimum age specified in state law to legally purchase tobacco products.

- Problem Gambling – the gaming operation must establish a program, approved by the Tribal Gaming Agency, to mitigate pathological and problem gaming by implementing specified measures.
- Health and Safety Standards – the Tribe has agreed to adopt and comply with tribal health standards for food and beverage handling that are no less stringent than State public health standards. Also, the Tribe has agreed to comply with federal water quality and safe drinking water standards applicable in California.
- Building Codes and Fire Safety – in order to assure the protection of the health and safety of all gaming facility patrons, guests, and employees, the Tribe shall adopt or has already adopted, and shall maintain throughout the term of this Compact, an ordinance that requires any covered gaming facility construction to meet or exceed the California Building Code and the Public Safety Code applicable to the county in which the gaming facility is located.
- 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 – the 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.
- 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.

### **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 California Gambling Control Commission (CGCC) and the Department of Justice (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.)

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 "sunset" 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 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. The TNGF 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, pertaining to the Pala Band of Mission Indians; the Pauma Band of Luiseno Mission Indians; the Rumsey Band of Wintun Indians; the United Auburn Indian Communities; and, the

Viejas Band 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 this hearing included state finance and gambling officials, the State Treasurer, representatives of the Governor, as well 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.)

## **SUPPORT**

Viejas Band of Kumeyaay Indians; California Labor Federation; and, UNITE-HERE, AFL-CIO

## **OPPOSITION**

None received

## **PRIOR and CURRENT LEGISLATION**

AB 1767 (Bigelow, 2016) would ratify the 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. (Pending referral to the Senate floor)

AB 629 (Gonzalez/Waldron, 2016) would ratify the tribal-state gaming compact entered into between the State of California and the Pala Band of Mission Indians, executed on May 6, 2016. (Pending on Assembly floor)

AB 291 (Medina, 2016) would ratify the tribal-state gaming compact entered into between the State of California and the Barona Band of Mission Indians, executed on June 22, 2016. (Pending referral to the Senate floor)

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 (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, 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.

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.