

SA2004RF0005, AmDT.
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February 3, 2004

By Facsimile & Overnight Delivery

The Honorable Bill Lockyer
Attorney General of the State of California
1300 I Street
Sacramento, CA 95814

Attn.: Tricia Knight, Initiative Coordinator

Re: The Indian Gaming Fair-Share Revenue Act of 2004 (No.SA2004RF0005)
Initiative Constitutional Amendment and Statute – Technical Amendment

Dear Ms. Knight:

I am the proponent of the proposed initiative measure entitled "The Indian Gaming Fair-Share Revenue Act of 2004," which was initially filed with your office on January 20, 2004. Enclosed herewith is a revised version of the proposed measure that incorporates a minor technical amendment clarifying certain language in proposed subdivision (h)(1) of article IV, section 19. The amendment makes no substantive changes to the version of the initiative that was submitted on January 20, 2004.

Pursuant to article II, section 10(d), of the California Constitution and section 9002 of the California Elections Code, I continue to request the preparation of a title and summary of the chief purposes and points of the proposed measure. I understand that due to the timing and non-substantive nature of this amendment, no additional filing fee is required and no additional time will be necessary for the preparation of the title and summary. Per your request, I have signed and attached a new statement required pursuant to Elections Code section 9608.

As before, you are hereby authorized to direct all further inquiries and correspondence regarding this proposed measure to the following persons:

Gene Raper
74924 Country Club Drive, #150-88
Palm Desert, CA 92260
(760) 778-7413

Fredric D. Woocher, Esq.
Strumwasser & Woocher LLP
100 Wilshire Blvd., Ste. 1900
Santa Monica, CA 90401
(310) 576-1233

~~Yours~~ truly,

Richard M. Milanovich

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

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I, Richard Milanovich, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Richard M. Milanovich

Dated this 3rd day of February, 2004

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THE INDIAN GAMING FAIR-SHARE REVENUE ACT OF 2004

SECTION 1. Title

This Act shall be known as the "Indian Gaming Fair-Share Revenue Act of 2004."

SECTION 2. Findings and Purpose

The People of the State of California hereby find and declare as follows:

(a) The purpose of the People of the State of California in enacting this measure is to provide a means for California Indian tribes to contribute their fair share of gaming revenues to the State of California. Both the People of California and California Indian tribal governments desire for tribes to assist in restoring financial integrity to the State by contributing an amount that is equivalent to what any private California corporation pays to the State on the net income it earns from its lawful business activities.

(b) In March 2000, the People of the State of California adopted Proposition 1A, which authorized the Governor to negotiate tribal-state gaming compacts with federally recognized Indian tribes for the operation of slot machines and certain casino games on tribal lands in California in accordance with federal law. Proposition 1A was enacted by the People in recognition of the fact that, historically, Indian tribes within the State have long suffered from high rates of unemployment and inadequate educational, housing, elderly care, and health care opportunities, while typically being located on lands that are not conducive to economic development in order to meet those needs.

(c) Since the adoption of Proposition 1A, over fifty Indian tribes have entered into tribal gaming compacts with the State of California. These compacts and the gaming facilities they authorize have assisted Indian tribes throughout the State to move towards economic self-sufficiency by providing a much-needed revenue source for various tribal purposes, including tribal government services and programs such as those that address reservation housing, elderly care, education, health care, roads, sewers, water systems, and other tribal needs. Tribal gaming has also spurred new development, has created thousands of jobs for Indians and non-Indians alike, and has had a substantial positive economic impact on the local communities in which these facilities are located.

(d) Under the existing tribal gaming compacts, Indian tribes also pay millions of dollars each year into two State special funds that are used to provide grants to local governments, to finance programs addressing gambling addiction, to reimburse the State for the costs of regulating tribal gaming, and to share gaming revenues with other Indian tribes in the State that do not operate gaming facilities. However, because Indian tribes are sovereign governments and are exempt from most forms of taxation, they do not pay any corporate income taxes directly to the State on the profits derived from their gaming operations.

(e) Given California's current fiscal crisis, the State needs to find new ways to

generate revenues for the General Fund in the State Treasury. Indian tribes want to and should do their part to assist California in meeting its budget needs by contributing to the State a fair share of the net income they receive from gaming activities in recognition of their continuing right to operate tribal gaming facilities in an economic environment free of competition from casino-style gaming on non-Indian lands. A fair share for the Indian tribes to contribute to the State is an amount that is equivalent to the amount of corporate taxes that a private California corporation pays to the State on the net income it earns from its lawful business activities.

(f) Accordingly, in order to provide additional revenues to the State of California in this time of fiscal crisis, this measure authorizes and requires the Governor to enter into new or amended tribal gaming compacts under which the Indian tribes agree to contribute to the State a fair share of the net income derived from their gaming activities in exchange for the continued exclusive right to operate casino-style gaming facilities in California. In addition, in order to maximize revenues for the State and to permit the free market to determine the number and type of casino games and devices that will exist on tribal lands, this measure requires these new or amended compacts to allow each tribal government to choose the number and size of the gaming facilities it operates, and the types of games offered, that it believes will maximize the tribe's income, as long as the facilities are restricted to and are located in those areas that have been designated by both the State of California and the United States government as tribal lands. Under the new or amended compacts authorized by this measure, Indian tribes must also prepare environmental impact reports analyzing the off-reservation impacts of any proposed new or expanded gaming facilities, and they must consult with the public and local government officials to develop a good-faith plan to mitigate any significant adverse environmental impacts.

SECTION 3. Section 19 of Article IV of the California Constitution is amended to read:

Sec. 19

(a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c) Notwithstanding subdivision (a), the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

(d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.

(e) The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.

(f) Notwithstanding subdivisions (a) and (e), and any other provision of state

law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of ~~lottery games and banking and percentage card games~~ any and all forms of Class III gaming by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, roulette, craps, and banking and percentage card games, and any and all other forms of casino gaming are hereby specifically permitted to be conducted and operated on tribal lands subject to those compacts.

(fg) Notwithstanding subdivision (a), the Legislature may authorize private, nonprofit, eligible organizations, as defined by the Legislature, to conduct raffles as a funding mechanism to provide support for their own or another private, nonprofit, eligible organization's beneficial and charitable works, provided that (1) at least 90 percent of the gross receipts from the raffle go directly to beneficial or charitable purposes in California, and (2) any person who receives compensation in connection with the operation of a raffle is an employee of the private nonprofit organization that is conducting the raffle. The Legislature, two-thirds of the membership of each house concurring, may amend the percentage of gross receipts required by this subdivision to be dedicated to beneficial or charitable purposes by means of a statute that is signed by the Governor.

(h) Notwithstanding subdivisions (e) and (f), and any other provision of state law, within thirty days of being requested to do so by any federally recognized Indian tribe, the Governor is authorized, directed, and required to amend any existing compact with any Indian tribe, and to offer a new compact to any federally recognized Indian tribe without an existing compact, in accordance with the provisions of this subdivision (h). An "existing compact" means a gaming compact entered into between the State and an Indian tribe that was ratified prior to the effective date of the Indian Gaming Fair-Share Revenue Act of 2004. Any existing compact that is amended pursuant to this subdivision (h) shall not require legislative ratification, but any new compact entered into pursuant to this subdivision (h) shall be submitted to the Legislature within fifteen days after the conclusion of negotiations and shall be deemed ratified if it is not rejected by each house of the Legislature, two-thirds of the members thereof concurring in the rejection, within thirty days of the submission of the compact to the Legislature by the Governor, except that if this thirty-day period ends during a joint recess of the Legislature, the period shall be extended until the tenth day following the day on which the Legislature reconvenes. All compacts amended pursuant to this subdivision (h), and all new compacts entered into pursuant to this subdivision (h), shall include the following terms, conditions, and requirements:

(1) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision (h) shall agree under the terms of the compact to contribute to the State, on a sovereign-to-sovereign basis, a percentage of its net income from gaming activities that is equivalent to the amount of revenue the State would receive on the

same amount of net business income earned by a private, non-exempt California corporation based upon the then-prevailing general corporate tax rate under the state Revenue and Taxation Code. This contribution shall be made in consideration for the exclusive right enjoyed by Indian tribes to operate gaming facilities in an economic environment free of competition for slot machines and other forms of Class III casino gaming on non-Indian lands in California. The compact shall provide that in the event the Indian tribes lose their exclusive right to operate slot machines and other forms of Class III casino gaming in California, the obligation of the Indian tribe to contribute to the State a portion of its net income from gaming activities pursuant to this subdivision (h) shall cease. Contributions made to the State pursuant to this subdivision (h) shall be in lieu of any and all other fees, taxes or levies that may be charged or imposed, directly or indirectly, by the State, cities, or counties against the Indian tribe on its authorized gaming activities, except that a tribe amending an existing compact or entering into a new compact pursuant to this subdivision (h) shall be required to make contributions to the Revenue Sharing Trust Fund and, if the tribe operated gaming devices on September 1, 1999, to the Special Distribution Fund, in amounts and under terms that are identical to those contained in the existing compacts.

(2) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision (h) shall agree under the terms of the compact to adopt an ordinance providing for the preparation, circulation, and consideration by the tribe of an environmental impact report analyzing potential off-reservation impacts of any project involving the development and construction of a new gaming facility or the significant expansion, renovation, or modification of an existing gaming facility. The environmental impact report prepared in accordance with this subdivision shall incorporate the policies and objectives of the National Environmental Policy Act and the California Environmental Quality Act consistent with the tribe's governmental interests. Prior to the commencement of any such project, the tribe shall also agree (i) to inform and to provide an opportunity for the public to submit comments regarding the planned project, (ii) to consult with local governmental officials regarding mitigation of significant adverse off-reservation environmental impacts and to make good-faith efforts to mitigate any and all such significant adverse off-reservation environmental impacts, and (iii) to keep local governmental officials and potentially affected members of the public informed of the project's progress.

(3) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision (h) shall be entitled under the terms of the compact to operate and conduct any forms and kinds of gaming authorized and permitted pursuant to subdivision (f)

of this section.

(4) Any federally recognized Indian tribe requesting to enter into a new or amended compact pursuant to this subdivision (h) shall be entitled under the terms of the compact to operate as many slot machines and to conduct as many games as each tribal government deems appropriate. There shall likewise be no limit under the terms of the compact on the number or the size of gaming facilities that each tribe may establish and operate, provided that each and every such gaming facility must be owned by the tribe and operated only on Indian lands on which such gaming may lawfully be conducted under federal law.

(5) The initial term of any new or amended compact entered into pursuant to this subdivision (h) shall be ninety-nine years, and the compact shall be subject to renewal upon mutual consent of the parties. The terms and conditions of any new or amended compact entered into pursuant to this subdivision (h) may be amended at any time by the mutual and written agreement of both parties.

(6) Any Indian tribe with an existing compact that wishes to enter into an amended compact pursuant to this subdivision (h) shall not be required as a condition thereof to make any other amendments to its existing compact or to agree to any other terms, conditions, or restrictions beyond those contained in this subdivision (h) and in its existing compact, except as the provisions of its existing compact may be modified in accordance with subdivisions (1) - (5) above.

SECTION 4. Section 12012.80 is added to the California Government Code to read:

12012.80 Indian Gaming Fair-Share Revenue Fund

(a) There is hereby created in the State Treasury a fund called the "Indian Gaming Fair-Share Revenue Fund" for the receipt and deposit of moneys received by the State from Indian tribes under the terms of tribal-state gaming compacts entered into or amended pursuant to article IV, section 19, subdivision (h), of the California Constitution.

(b) Moneys in the Indian Gaming Fair-Share Revenue Fund shall be available for appropriation by the Legislature for any purpose specified by law.

SECTION 5. Inconsistency With Other Ballot Measures

The provisions of this Act shall be deemed to conflict with and to be inconsistent with any other initiative measure that appears on the same ballot that amends the California Constitution relating to gaming by federally recognized Indian tribes in California. In the event that this Act and another measure that amends the California Constitution relating to gaming by Indian tribes are adopted at the same election, the measure receiving the greater number of affirmative votes shall prevail in its entirety, and no provision of the measure receiving the fewer number of affirmative votes shall be given any force or effect.

SECTION 6. Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Act that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Act are severable.