

Date of Hearing: April 27, 2017

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 880 (Gray) – As Introduced February 16, 2017

SUBJECT: Tribal Nation Grant Fund

SUMMARY: Would implement requirements pertaining to the Tribal Nation Grant Fund (TNGF), as specified. States the TNGF is intended to assist eligible tribal governments in deploying comprehensive business planning strategies and activities. Prohibits the California Gambling Control Commission (GGCC) from exercising any discretion or control over, or from bearing any responsibility arising from, the recipient tribes' uses or disbursement of TNGF moneys. Specifically, **this bill:**

- 1) Provides the fiscal operations of the Tribal Nation Grant Fund (TNGF) shall be administered by the CGCC, which acts as a limited trustee not subject to the duties and liabilities contained in the Probate Code, similar state or federal statutes, rules or regulations, or under state or federal common law or equitable principles, and with no duties or obligations as provided for under the terms of any tribal-state gaming compact, except for the receipt, deposit, and distribution of moneys paid by gaming tribes for the benefit of nongaming tribes and limited-gaming tribes, as those payments are directed by a state-designated agency.
- 2) Provides the CGC shall allocate and disburse TNGF moneys as specified by a state-designated agency to one or more eligible nongaming and limited-gaming tribes upon a competitive application basis.
- 3) Provides the CGCC shall exercise no discretion or control over, nor bear any responsibility arising from, the recipient tribes' use or disbursement of TNGF moneys.
- 4) States the TNGF is intended to assist eligible tribal governments in deploying comprehensive business planning strategies and activities.
- 5) Provides the state-designated agency (to be determined) shall perform any necessary audits to ensure that moneys awarded to any tribe are being used in accordance with their disbursement in relation to the purpose of the TNGF.

EXISTING LAW:

- 1) Provides, under the federal Indian Gaming Regulatory Act of 1988, for the negotiation and execution of compacts for the purpose of authorizing class III gaming on Indian lands within a state. Additionally, the California Constitution authorizes the Governor to negotiate and conclude compacts, subject to ratification by the Legislature.
- 2) Ratifies a number of tribal-state gaming compacts, and amendments of tribal-state gaming compacts, between the State of California and specified Indian tribes.
- 3) Creates the Indian Gaming Special Distribution Fund (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 in connection with the implementation and administration of compacts; (d) payment of shortfalls that may occur in the Indian Gaming Revenue Sharing Trust Fund (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. The distribution formula "sunsets" on January 1, 2021.

4) 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 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 the 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.

5) Requires CGCC to, on or before the day of the May budget revision for each fiscal year, determine the anticipated total amount of shortfalls in payment likely to occur in the RSTF for the next fiscal year, and to provide to the committee in the Senate and Assembly that considers the State Budget an estimate of the amount needed to transfer from the SDF to backfill the RSTF for the next fiscal year.

6) Creates in the State Treasury the TNGF 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. This fund is designed to be fluid and payments are intended to be made to non-gaming tribes on a "need" basis, upon application by non-gaming tribes.

7) Specifies that the TNGF reflects a vision of facilitating the development of tribal institutions and improving the quality of life of tribal people throughout the state.

FISCAL EFFECT: Unknown

COMMENTS:

Background

The State of California has signed and ratified Tribal-State Gaming Compacts with 72 Tribes and there are Secretarial Procedures in effect with three Tribes. There are currently 62 casinos operated by 60 Tribes. These compacts require the tribes make payments to various state accounts under certain conditions. Specific payment requirements differ across tribes and depend on various factors, such as the number of machines operated and/or the average slot machine net win (a measure of slot machine revenue). Funds deposited into the RSTF are distributed to certain federally recognized Indian tribes that either do not operate casinos or operate casinos with less than 350 slot machines. These tribes generally each receive \$1.1

million annually. Annual RSTF expenditures have routinely exceeded revenues. State law requires that these shortfalls be addressed by transferring sufficient funds from the SDF annually to ensure every eligible tribe receives its full \$1.1 million payment.

In July 2011, the Ninth Circuit Court of Appeal decided in the *Rincon Band v. Schwarzenegger* case that the state cannot require tribes to make payments to the General Fund. While the compacts requiring these payments still stand, many tribes currently making payments to the General Fund have renegotiated their compacts to redirect monies to the RSTF, TNGF, and other stipulated uses. This redirection of revenue sharing obligations has eliminated the structural imbalances in the SDF and RSTF and the need for General Fund transfers to the RSTF.

Purpose of the bill. According to the author's office, this bill will further the vision of creating a competitive grant fund for non-gaming tribes or those with very limited gaming for economic development, infrastructure, health care, education and other projects.

The author's office notes that the TNGF was initially created in the Graton Rancheria Compact of 2012 and included in subsequent compacts as a new destination for gaming revenue for distribution of funds to non-gaming and limited gaming tribes, upon application of such tribes for purposes related to effective self-governance, self-determined community, and economic development. The TNGF was created to complement the RSTF.

Currently, the TNGF is not being funded due to shortfalls in the RSTF. The RSTF is expected to be fully funded by June 30, 2018, which would allow for revenue contributions into the TNGF thereafter.

AB 880 will help establish an effective regulatory structure for the TNGF and to increase the impact of gaming revenues on non-gaming and limited gaming tribes. The bill specifies that the CGCC shall exercise no discretion or control over, nor bear any responsibility arising from, the recipient tribes' use or disbursement of TNGF moneys. In addition, a state-designated agency (to be determined) shall perform any necessary audits to ensure that moneys awarded to any tribe are being used in accordance with their disbursement in relation to the purpose of the TNGF.

According to the author's office, the TNGF is intended to assist eligible tribal governments in deploying comprehensive business planning strategies and activities. Specified goals of the TNGF may include supporting the activities of eligible Native American community-based organizations, tribal colleges, and tribal government organizations that support private sector business development on reservations and in tribal communities. The TNGF reflects a vision of facilitating the development of tribal institutions and improving the quality of life of tribal people throughout the state.

Prior legislation. AB 1355 (Gray), Chapter 118, Statutes of 2016. Specifies that the TNGF reflects a vision of facilitating the development of tribal institutions and improving the quality of life of tribal people throughout the state.

AB 2914 (Committee on Governmental Organization), Chapter 110, Statutes of 2016. Clarifies provisions in current law relating to the RSTF for the purpose of making distributions to eligible recipient Indian tribes.

AB 1916 (Hall, Chapter 600, Statutes of 2014). Created the TNGF in the State Treasury, to be administered by the CGCC, for the receipt and deposit of moneys received by the state from Indian tribes, pursuant to the terms of tribal-state gaming compacts.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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