

# Bill Text

## 113th Congress (2013-2014)

### S.477.IS

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#### S.477 -- Tribal Gaming Eligibility Act (Introduced in Senate - IS)

S 477 IS

113th CONGRESS  
1st Session  
S. 477

To amend the Indian Gaming Regulatory Act to modify a provision relating to gaming on land acquired after October 17, 1988.

#### IN THE SENATE OF THE UNITED STATES

**March 6, 2013**

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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#### A BILL

To amend the Indian Gaming Regulatory Act to modify a provision relating to gaming on land acquired after October 17, 1988.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## **SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Tribal Gaming Eligibility Act'.

## **SEC. 2. GAMING ON LAND ACQUIRED AFTER OCTOBER 17, 1988.**

Section 20 of the Indian Gaming Regulatory Act (25 U.S.C. 2719) is amended--  
(1) by striking the section designation and heading and all that follows through  
'(a) Except' and inserting the following:

### **'SEC. 20. GAMING ON LAND ACQUIRED AFTER OCTOBER 17, 1988.**

'(a) In General- Except'; and  
(2) in subsection (b)--

(A) in paragraph (1)(B), in the matter preceding clause (i), by striking  
'lands are taken' and inserting 'subject to paragraph (2), land is taken';  
(B) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4),  
respectively;

(C) by inserting after paragraph (1) the following:

'(2) APPLICABILITY TO CERTAIN LAND-

'(A) IN GENERAL- Except as provided in subparagraph (D), effective  
beginning on the date of enactment of the Tribal Gaming Eligibility Act,  
in addition to any other requirements under applicable Federal law,  
gaming conducted pursuant to an exception under paragraph (1)(B) shall  
not be conducted on land taken into trust after October 17, 1988, by the  
United States for the benefit of an Indian tribe unless the Secretary  
determines, on the date the land is taken into trust, that the Indian tribe--

'(i) has received a written determination by the Secretary that the  
land is eligible to be used for gaming under this section; and

'(ii) demonstrates--

'(I) in accordance with subparagraph (B), a substantial,  
direct, modern connection to the land taken into trust, as of  
October 17, 1988; and

'(II) in accordance with subparagraph (C), a substantial,  
direct, aboriginal connection to the land taken into trust.

'(B) SUBSTANTIAL, DIRECT, MODERN CONNECTION- In making a  
determination under subparagraph (A)(ii)(I) that an Indian tribe  
demonstrates a substantial, direct, modern connection to land taken into  
trust as of October 17, 1988, the Secretary shall certify that--

'(i) if the Indian tribe has a reservation--

'(I) the land is located within a 25-mile radius of the tribal  
headquarters or other tribal governmental facilities of the  
Indian tribe on the reservation;

'(II) the Indian tribe has demonstrated a temporal  
connection to, or routine presence on, the land during the

period beginning on October 17, 1988, and ending on the date of the certification; and

`(III) the Indian tribe has not been recognized or restored to Federal recognition status during the 5-year period preceding the date of the certification; or

`(ii) if the Indian tribe does not have a reservation--

`(I) the land is located within a 25-mile radius of an area in which a significant number of members of the Indian tribe reside;

`(II) the Indian tribe has demonstrated a temporal connection to, or routine presence on, the land during the period beginning on October 17, 1988, and ending on the date of the certification; and

`(III)(aa) the land was included in the first-submitted request of the Indian tribe for newly acquired land since the date on which the Indian tribe was recognized or restored to Federal recognition; or

`(bb)(AA) the application to take the land into trust was received by the Secretary during the 5-year period beginning on the date on which the Indian tribe was recognized or restored to Federal recognition; and

`(BB) the Indian tribe is not conducting any gaming activity on any other land.

`(C) SUBSTANTIAL, DIRECT, ABORIGINAL CONNECTION- In making a determination under subparagraph (A)(ii)(II) that an Indian tribe demonstrates a substantial, direct, aboriginal connection to land, the Secretary shall take into consideration some or all of the following factors:

`(i) The historical presence of the Indian tribe on the land, including any land to which the Indian tribe was relocated pursuant to the forcible removal of tribal members from land as a result of acts of violence, an Act of Congress, a Federal or State administrative action, or a judicial order.

`(ii) Whether the membership of the Indian tribe can demonstrate lineal descent or cultural affiliation, in accordance with section 10.14 of title 43, Code of Federal Regulations (or a successor regulation).

`(iii) The area in which the unique language of the Indian tribe has been used.

`(iv) The proximity of the land to culturally significant sites of the Indian tribe.

`(v) The forcible removal of tribal members from land as a result of acts of violence, an Act of Congress, a Federal or State administrative action, or a judicial order.

`(vi) Other factors that demonstrate a temporal presence of the Indian tribe on the land prior to the first interactions of the Indian

tribe with nonnative individuals, the Federal Government, or any other sovereign entity.

`(D) EXCEPTIONS-

`(i) IN GENERAL- Subparagraphs (A) through (C) shall not apply--

`(I) to any land on which gaming regulated by this Act will not take place;

`(II) to any land located within, or contiguous to, the boundaries of the reservation of an Indian tribe, as of October 17, 1988;

`(III) if--

`(aa) the relevant Indian tribe did not have a reservation on October 17, 1988; and

`(bb) the land is located--

`(AA) in the State of Oklahoma and within the boundaries of the former reservation of the Indian tribe, as defined by the Secretary, or contiguous to other land held in trust or restricted status by the United States for the Indian tribe in the State of Oklahoma; or

`(BB) in a State other than Oklahoma and within the last recognized reservation of the Indian tribe in any State in which the Indian tribe is presently located; or

`(IV) if the relevant Indian tribe has--

`(aa) taken land into trust during the period beginning on October 17, 1988, and ending on the date of enactment of the Tribal Gaming Eligibility Act; and

`(bb) has received a written determination by the Secretary that the land is eligible to be used for gaming under this section.

`(ii) CERTAIN DECISIONS-

`(I) IN GENERAL- Subject to subclause (II), subparagraphs (A) through (C) shall not apply to a final agency decision issued before the date of enactment of the Tribal Gaming Eligibility Act.

`(II) PENDING APPLICATIONS- Subparagraphs (A) through (C) shall apply to an application that is pending, but for which a final agency decision has not been made, as of the date of enactment of the Tribal Gaming Eligibility Act.

`(E) ADMINISTRATION- An action under this paragraph shall be considered a final administrative action for purposes of subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the `Administrative Procedure Act`); and

(D) in paragraph (4) (as redesignated by subparagraph (B)), by striking `paragraph (2)(B)' and inserting `paragraph (3)(B),'.